H.R. 3534, "THE CONSOLIDATED LAND, ENERGY, AND AQUATIC RESOURCES ACT OF 2009" (PARTS 1 AND 2)

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

September 16 and 17, 2009

Serial No. 111-35

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

52-277 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON NATURAL RESOURCES

NICK J. RAHALL, II, West Virginia, *Chairman*
DOC HASTINGS, Washington, *Ranking Republican Member*

Dale E. Kildee, Michigan
Eni F.H. Faleomavaega, American Samoa
Neil Abercrombie, Hawaii
Frank Pallone, Jr., New Jersey
Grace F. Napolitano, California
Rush D. Holt, New Jersey
Raúl M. Grijalva, Arizona
Madeleine Z. Bordallo, Guam
Jim Costa, California
Dan Boren, Oklahoma
Gregorio Sablan, Northern Marianas
Martin T. Heinrich, New Mexico
George Miller, California
Edward J. Markey, Massachusetts
Peter A. DeFazio, Oregon
Maurice D. Hinchey, New York
Donna M. Christensen, Virgin Islands
Diana DeGette, Colorado
Ron Kind, Wisconsin
Lois Capps, California
Jay Inslee, Washington
Joe Baca, California
Stephanie Herseth Sandlin, South Dakota
John P. Sarbanes, Maryland
Carol Shea-Porter, New Hampshire
Niki Tsongas, Massachusetts
Frank Kratovil, Jr., Maryland
Pedro R. Pierluisi, Puerto Rico

Don Young, Alaska
Elton Gallegly, California
John J. Duncan, Jr., Tennessee
Jeff Flake, Arizona
Henry E. Brown, Jr., South Carolina
Cathy McMorris Rodgers, Washington
Louie Gohmert, Texas
Rob Bishop, Utah
Bill Shuster, Pennsylvania
Doug Lamborn, Colorado
Adrian Smith, Nebraska
Robert J. Wittman, Virginia
Paul C. Broun, Georgia
John Fleming, Louisiana
Mike Coffman, Colorado
Jason Chaffetz, Utah
Cynthia M. Lummis, Wyoming
Tom McClintock, California
Bill Cassidy, Louisiana

James H. Zoia, *Chief of Staff*
Rick Healy, *Chief Counsel*
Todd Young, *Republican Chief of Staff*
Lisa Pittman, *Republican Chief Counsel*

CONTENTS

	Page
Hearing held on Wednesday, September 16, 2009	1
Statement of Members:	
Hastings, Hon. Doc, a Representative in Congress from the State of Washington	5
Prepared statement of	6
Rahall, Hon. Nick J., II, a Representative in Congress from the State of West Virginia	1
Prepared statement of	3
Statement of Witnesses:	
Kendall, Mary L., Inspector General (Acting), U.S. Department of the Interior	72
Prepared statement of	73
Response to questions submitted for the record	76
Lubchenco, Jane, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, U.S. Department of Commerce	45
Prepared statement of	47
Relevant NOAA Legislative Mandates for the Protection of Marine Species and Their Environment	50
Response to questions submitted for the record	53
Rusco, Frank, Director, Natural Resources and Environment, U.S. Government Accountability Office	78
Prepared statement of	80
Response to questions submitted for the record	90
Salazar, Hon. Ken, Secretary, U.S. Department of the Interior	8
Prepared statement of	12

CONTENTS

Page

Hearing held on Thursday, September 17, 2009 97

Statement of Members:
- Hastings, Hon. Doc, a Representative in Congress from the State of Washington 97
  - Prepared statement of 98
- Smith, Hon. Adrian, a Representative in Congress from the State of Nebraska, Statement submitted for the record 241

Statement of Witnesses:
- Brian, Danielle, Executive Director, Project on Government Oversight 111
  - Prepared statement of 113
  - Response to questions submitted for the record 117
- Campbell. Alex B., Vice President, Enduring Resources, LLC, on behalf of the Independent Petroleum Association of Mountain States 198
  - Prepared statement of 200
  - Response to questions submitted for the record 206
- Hodgskiss, Lyle E., Rancher/Senior Loan Officer, Rocky Mountain Front Advisory Committee 137
  - Prepared statement of 139
- Mann, Christopher, Senior Officer, Pew Environment Group, The Pew Charitable Trusts 118
  - Prepared statement of 120
  - Response to questions submitted for the record 124
- Mataczynski, Craig, President and CEO, RES Americas 183
  - Prepared statement of 185
  - Response to questions submitted for the record 190
- Morris, Doug, Group Director, Upstream & Industry Operations, American Petroleum Institute 220
  - Prepared statement of 222
  - Response to questions submitted for the record 223
- Smith, Hon. Stephen B., Mayor, Pinedale, Wyoming 99
  - Prepared statement of 101
  - Response to questions submitted for the record 107
- Squillace, Mark, Professor of Law, and Director, Natural Resources Law Center, University of Colorado Law School 127
  - Prepared statement of 130
  - Supplemental testimony submitted for the record 133
  - Response to questions submitted for the record 135
- Stover, Dennis E., Ph.D., Executive Vice President, Uranium One, Americas, on behalf of the National Mining Association 212
  - Prepared statement of 214
  - Response to questions submitted for the record 217
- Zorn, James E., Executive Administrator, Great Lakes Indian Fish and Wildlife Commission 227
  - Prepared statement of 229

Additional materials supplied:
- Alberswerth, David, Senior Policy Advisor, on behalf of The Wilderness Society, Statement submitted for the record 160
- Board of County Commissioners, Sublette County, Wyoming, Letter submitted for the record by Congresswoman Lummis 153
- DeCoster, Kathy, Vice President and Director of Federal Affairs, The Trust for Public Land (TPL), Statement submitted for the record 241
- Dooley, Cal, President and CEO, American Chemistry Council, Letter and press release submitted for the record by Congressman Hastings ... 146

Page

Additional materials supplied—Continued
Land and Water Conservation Fund Coalition. Letter submitted for the record 243
Leshy, John D., Harry D. Sunderland Distinguished Professor of Law, University of California, Hastings College of the Law, Letter to Chairman Rahall submitted for the record 159
Lyons, Patrick, President, Western States Land Commissioners Association (WSLCA), Letter to Chairman Rahall submitted for the record 247
National Mining Association, Statement submitted for the record by Congressman Hastings 149
The Nature Conservancy, Statement and report on the Land and Water Conservation Fund submitted for the record by Congressman Rahall 248
Parnell, Hon. Sean, Governor, State of Alaska, Letter to Chairman Rahall submitted for the record 259
Pierpont, Ruth, Director, Division for Historic Preservation, New York State Office of Parks, Recreation and Historic Preservation, and President of the National Conference of State Historic Preservation Officers (NCSHPO), Statement submitted for the record 255
Sierra Club, Letter to the Members of the Committee on Natural Resources submitted for the record 263
Simmons, Jerry R., Executive Director, National Association of Royalty Owners (NARO), Letter to Chairman Rahall submitted for the record ... 265
Sims, Jim, President and CEO, Western Business Roundtable, Letter submitted for the record by Congressman Hastings 148
Skaer, Laura, Executive Director, Northwest Mining Association, Letter submitted for the record by Congressman Hastings 163
Sportsmen for Responsible Energy Development, Statement submitted for the record by Congressman Rahall 141
Comments and suggestions submitted for the record 143

LEGISLATIVE HEARING (PART 1) ON H.R. 3534, TO PROVIDE GREATER EFFICIENCIES, TRANSPARENCY, RETURNS, AND ACCOUNTABILITY IN THE ADMINISTRATION OF FEDERAL MINERAL AND ENERGY RESOURCES BY CONSOLIDATING ADMINISTRATION OF VARIOUS FEDERAL ENERGY MINERALS MANAGEMENT AND LEASING PROGRAMS INTO ONE ENTITY TO BE KNOWN AS THE OFFICE OF FEDERAL ENERGY AND MINERALS LEASING OF THE DEPARTMENT OF THE INTERIOR, AND FOR OTHER PURPOSES. "THE CONSOLIDATED LAND, ENERGY, AND AQUATIC RESOURCES ACT OF 2009"

Wednesday, September 16, 2009
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:08 a.m., in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Faleomavaega, Napolitano, Holt, Grijalva, Bordallo, Costa, Markey, DeFazio, Hinchey, Christensen, DeGette, Inslee, Baca, Herseth Sandlin, Pierluisi, Sarbanes, Shea-Porter, Tsongas, Kratovil, Hastings, Duncan, Flake, Brown, Gohmert, Bishop, Lamborn, Smith, Wittman, Broun, Fleming, Coffman, Lummis, McClintock, and Cassidy.

STATEMENT OF HON. NICK J. RAHALL, II, A REPRESENTATIVE INCONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. The Committee on Natural Resources will come to order, please. Before the Committee begins and I make my opening comments, I would like to take a point of personal privilege and say Happy Birthday to a member of our Committee who happens to be a classmate of mine who came with me to this body some 33 years ago. And he has now reached his, shall I say, OK, 80th birthday. Dale Kildee, the gentleman from Michigan. I will let the Ranking Minority Member lead us in Happy Birthday since I would rather not sing. Happy Birthday, Dale.

The Committee is meeting today to discuss H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009, appropriately known as the CLEAR Act for its visionary approach to putting this country on a more sustainable path for energy development on our public lands and off our coasts.

Our two-part hearing begins today with vital input from the Secretary of the Interior, our good friend, Ken Salazar, the Administrator of the National Oceanic and Atmospheric Administration; Dr. Jane Lubchenco; and two government watchdogs. We will continue tomorrow with a variety of stakeholder perspectives on this proposal.

For too long, the only way the Interior Department has measured success has been by the number of acres leased and the number of wells drilled. Whether or not this was being done responsibly, safely, effectively, or with the best interest of the American people at heart, was simply an afterthought. We know from numerous hearings and a continuing stream of alarming reports from the Government Accountability Office and the Interior's own Inspector General that this approach has failed.

Just this week, three—count them, three—new GAO reports detailing major flaws in the Federal oil and leasing program are being released. These reports add significantly to the massive body of investigative work done over the past 25 years calling into question the management of the entire Federal oil and gas program. In one instance, the mismanagement led to a hearing before this Committee regarding the offensive behavior of employees in the Royalty-In-Kind Division who put partying and cozying up with industry officials above getting a fair return for the American taxpayer.

We have the opportunity, with the current Department of the Interior and with responsible action by this Congress, to ensure that the development of our Nation's resources is done right. The CLEAR Act, which I introduced after months of discussions with everyone from environmental groups to the oil and gas industry, is a comprehensive effort to steer us toward more responsible energy development. Our strategy is not one of no development. The CLEAR Act is about smarter development.

There are those who argue that Congress should just get out of the way and allow Federal land management agencies to open as much land as possible for drilling. To them I say the Bush Administration tried that approach and it failed. The previous administration granted every wish the oil and gas industry had, and what did this Nation get in return? An upsurge in the price of gasoline, increased dependence on foreign oil, a string of ethical scandals and a blind eye toward any environmental responsibility whatsoever, all while the oil and gas industry raked in staggering profits. Doubling down on the mistakes of the last 8 years is not the smart way to move forward.

To those who argue that we need an all-of-the-above approach to energy policy, I wholeheartedly agree. Where I disagree, however, is that for far too long, when it came to environmental responsibility, balanced development, and taxpayer protections—and let me stress the last, taxpayer protections—the previous administration pursued a none-of-the-above strategy.

The CLEAR Act will change that. Offshore, this bill creates a more comprehensive framework for siting and developing energy projects while taking into consideration the other uses and needs of the offshore environment. While the existing process works well in those areas that already have oil and gas development, it is

poorly suited for areas where new infrastructure may be required and new kinds of energy development may be possible. In addition to ensuring that fragile ecosystems and crucial fishing grounds remain protected, the CLEAR Act will give industry more predictability.

When it comes to offshore energy development, the costs of doing it right are negligible, but the consequences of doing it wrong are disastrous.

We believe this approach is an important piece of a larger comprehensive ocean planning effort that the President's Interagency Ocean Task Force is considering right now. That task force will issue its first recommendations this week, and we expect to work closely with the Administration as it moves forward.

Onshore, this bill recognizes that we need to get serious about renewable development with a comprehensive leasing program to facilitate fair access and smart siting rather than ad hoc projects under special use permits or rights-of-way.

This bill would establish the Office of Federal Energy and Minerals Leasing, combining the energy development work currently split between the MMS and the Bureau of Land Management. Having one agency doing the leasing and one agency collecting the money is inefficient, unnecessary, complex, and potentially costs the American people millions in lost royalties. The new office will help simplify matters for oil and gas companies and renewable energy developers, while allowing BLM to focus on its primary role as a multiple-use land management agency. And further, the legislation would dedicate a small portion of the enormous revenues generated by energy development toward fully funding the Land and Water Conservation Fund and the newly created Ocean Resources Conservation Assistance, or ORCA Fund. Through both programs we will reinvest proceeds from development into conservation.

This bill is a step toward restoring a balance to the management of our Federal oil and gas programs, and I commend Secretary Salazar for beginning that process and certainly for taking time to be with us today. He recognizes that we need to develop these resources, but he has also taken important steps to ensure that public lands containing important wildlife habitat, wilderness, and other non-renewable natural resources are protected.

I look forward to our discussion of H.R. 3534 and how we can best restore balance and common sense to our energy programs. And I recognize the Ranking Minority Member.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

The Committee is meeting today to discuss H.R. 3534, the "Consolidated Land, Energy, and Aquatic Resources Act of 2009," appropriately known as the CLEAR Act for its visionary approach to putting this country on a more sustainable path for energy development on our public lands and off our coasts.

Our two-part hearing begins today with vital input from the Secretary of the Interior, Ken Salazar, the Administrator of the National Oceanic and Atmospheric Administration, Dr. Jane Lubchenco, and two government watchdogs. We will continue tomorrow with a variety of stakeholder perspectives on this proposal.

For too long, the only way the Interior Department measured success was by the number of acres leased and the number of wells drilled. Whether or not this was

being done responsibly, safely, effectively, or with the best interests of the American people at heart was simply an afterthought.

We know from numerous hearings and a continuing stream of alarming reports from the Government Accountability Office and the Interior Department's Inspector General that this approach has failed. Just this week, three new GAO reports detailing major flaws in the federal oil and leasing program are being released.

These reports add significantly to the massive body of investigative work done over the past 25 years calling into question the management of the entire federal oil and gas program.

In one instance, this mismanagement led to a hearing before this Committee regarding the offensive behavior of employees in the Royalty-in-Kind division who put partying and cozying up with industry officials above getting a fair return for the American taxpayer.

We have the opportunity, with the current Department of the Interior and with responsible action by this Congress, to ensure that the development of our nation's resources is done right.

The CLEAR Act, which I introduced after months of discussions with everyone from environmental groups to the oil and gas industry, is a comprehensive effort to steer us toward more responsible energy development. Our strategy is not one of "no development"—the CLEAR Act is about smarter development.

There are those who argue that Congress should just get out of the way and allow federal land management agencies to open as much land as possible for drilling. To them I say the Bush Administration tried that approach and it failed.

The previous Administration granted every wish the oil and gas industry had and what did the Nation get in return? An upsurge in the price of gasoline, increased dependence on foreign oil, a string of ethical scandals and a blind eye toward any environmental responsibility whatsoever; all while the oil and gas industry raked in staggering profits.

Doubling down on the mistakes of the last eight years is not the smart way to move forward.

To those who argue that we need an "all of the above" energy policy, I wholeheartedly agree.

Where I disagree, however, is that for too long when it came to environmental responsibility, balanced development, and taxpayer protections—and let me stress that, taxpayer protections—the previous Administration pursued a "none of the above" strategy. The CLEAR Act will change that.

Offshore, this bill creates a more comprehensive framework for siting and developing energy projects while taking into consideration the other uses and needs of the offshore environment.

While the existing process works well in those areas that already have oil and gas development, it is poorly suited for areas where new infrastructure may be required and new kinds of energy development may be possible.

In addition to ensuring that fragile ecosystems and crucial fishing grounds remain protected, the CLEAR Act will give industry more predictability. When it comes to offshore energy development, the costs of doing it right are negligible, but the consequences of doing it wrong are disastrous.

We believe this approach is an important piece of a larger, comprehensive ocean planning effort that the President's Interagency Ocean Task Force is considering right now. That Task Force will issue its first recommendations this week, and we expect to work closely with the Administration as it moves forward.

Onshore, this bill recognizes that we need to get serious about renewable development with a competitive leasing program to facilitate fair access and smart siting, rather than ad hoc projects under special use permits or rights-of-way.

This bill would also establish the Office of Federal Energy and Minerals Leasing, combining the energy development work currently split between the Minerals Management Service and the Bureau of Land Management.

Having one agency do the leasing, and one agency collect the money, is inefficient, unnecessarily complex, and potentially costs the American people millions in lost royalties.

The new office would help simplify matters for oil and gas companies and renewable energy developers, while allowing BLM to focus on its primary role as a multiple-use land management agency.

Further, the legislation would dedicate a small portion of the enormous revenues generated by energy development toward fully funding the Land and Water Conservation Fund and the newly-created Ocean Resources Conservation Assistance, or ORCA, Fund. Through both programs we will reinvest proceeds from development in conservation.

This bill is a step towards restoring a balance to the management of our federal oil and gas programs, and I commend Secretary Salazar for beginning that process.

He recognizes that we need to develop these resources, but he has also taken important steps to ensure that public lands containing important wildlife habitat, wilderness and other non-renewable natural resources are protected.

I look forward to our discussion of H.R. 3534, and how we can best restore balance and common sense to our energy programs.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE INCONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you, Mr. Chairman. I am pleased to join you in welcoming Secretary Salazar to the Natural Resources Committee. We very much appreciate your taking the time to be here today.

Mr. Chairman, a specific topic of today's hearing is H.R. 3534, your legislation. Under the schedule set by you, Secretary Salazar is the first of many witnesses that this Committee will hear over the course of the next two days.

This legislation needs very careful and thorough review. Let me give you a few of my observations of that. At a time when our Nation should be focused on creating jobs and producing more energy here in America, this legislation appears to me to erect more roadblocks to energy job creation and production. For example, this legislation creates a new bureaucracy, it raises the cost of producing energy with higher and new fees, and it potentially adds years of delay to energy development, both offshore and on Federal lands. In my view, all of this will cost us the high-wage energy jobs that our American economy desperately needs right now. These roadblocks impact not just oil and natural gas, but also the production of wind and solar renewable energy. So, it is difficult to discern how this legislation will result in more domestic energy production.

Just as the Waxman-Markey national energy tax will drive up the cost of energy in America and send jobs overseas to foreign nations, this bill, too, fails to produce more energy, and it potentially costs us jobs here in America.

On the other hand, the Republican all-of-the-above energy plan stands in stark contrast to the Democratic agenda to erect new obstacles and levy high taxes on more energy developed in the United States. That bill, H.R. 2846, was introduced in June and its consideration is under the jurisdiction of this Committee.

While many in Washington want to pick and choose which energy jobs to create, the Republican all-of-the-above plan is focused on creating all of the energy jobs that we can—green jobs, solar jobs, wind jobs, drilling jobs, nuclear jobs, and clean coal jobs. With unemployment reaching almost 10 percent nationally, our Nation can't afford to only pursue one aspect—and that is the green jobs. We need to get all the jobs that we can get.

So, I hope, Mr. Chairman, that we can explore the benefits of H.R. 2846. In addition to questions about Mr. Rahall's legislation, I know that many of my colleagues, likely on both sides of the aisle, will have additional matters that they wish to raise with the Secretary.

There is a great deal that has happened during the first 8 months of this new administration, and today's hearing is an

opportunity to talk directly with the Secretary about matters under his jurisdiction at the Department of the Interior. For example, there is great concern over the 6-month delay that has been imposed on development of the new 5-year leasing program for offshore drilling.

Last year, President Bush and the Congress lifted the moratorium on offshore drilling. Yet, in spite of the broad bipartisan support across the country for opening additional areas of drilling, among the first acts of this administration was to put such plans on hold for 6 months. Next Monday marks the end of this 6-month period, and I hope the Secretary will detail for us the plans for moving forward promptly with the 5-year offshore leasing plan.

At the same time that new offshore leases were being delayed, other actions were taken by the Department that also harmed the production of more American energy and creation of American jobs. Oil and gas leases were suddenly withdrawn in Utah, and oil shale research that would create new jobs in Colorado, Wyoming, and Utah were delayed, and $31 billion in higher taxes on oil and gas production that were proposed in the President's budget.

I know there are members of this Committee who wish to try to understand how the spoken words of this administration in support of more energy production matches up against their actions that, frankly, appear contradictory to their spoken words.

There is also the $3 billion in economic stimulus funds that the Department received this year. I am sure many on the Committee are interested in hearing how this large sum of money is being spent and how many specific jobs have been created.

So, Mr. Chairman, in the interest of allowing as much time as possible to hear from the Secretary, I will conclude my remarks. And again, thank you for holding this hearing, and I want to thank, once again, the Secretary for appearing in front of the Natural Resources Committee. With that, I yield back.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, Ranking Member, Committee on Natural Resources

Thank you Mr. Chairman.

The specific topic of today's hearing is H.R. 3534. Under the schedule set by Chairman Rahall, Secretary Salazar is just the first of many witnesses that the Committee will hear from over the course of two days. This legislation needs very careful and thorough review. At a time our nation should be focused on creating jobs and producing more energy here in America, this legislation erects more roadblocks to energy job creation and production. For example, it creates a new bureaucracy, it raises the costs of producing energy with higher and new fees, and it potentially adds years of delay to energy development both offshore and on federal lands. In my view, all of this will cost us the high-wage energy jobs that America's economy desperately needs. These roadblocks impact not just oil and natural gas, but also the production of wind and solar renewable energy.

It is difficult to discern how this legislation will result in more domestic energy production. Just as the Waxman-Markey National Energy Tax will drive up the cost of energy in America and send jobs overseas to foreign nations, this bill too fails to produce more energy and costs us jobs.

The Republican "all-of-the-above" energy plan stands in stark contrast to the Democrat agenda to erect new obstacles and levy high taxes on more energy development in the United States. That bill, H.R. 2846, was introduced in June and its consideration is under the jurisdiction of this Committee. This "all-of-the-above" plan has four main objectives:

- Increase production of American-made energy in an environmentally responsible and sound manner;

- Promote new, clean and renewable sources of energy such as nuclear, hydropower, clean-coal-technology, wind and solar energy;
- Encourage greater efficiency and conservation by extending tax incentives for energy efficiency and rewarding development of greater conservation techniques and new energy resources; and,
- Cut red-tape and reduce frivolous litigation.

While many in Washington, DC want to pick and choose which energy jobs to create, the Republican "all-of-the-above" plan is focused on creating ALL of the energy jobs we can: green jobs, solar jobs, wind jobs, drilling jobs, nuclear jobs, clean-coal jobs. With unemployment reaching almost 10 percent nationally, our nation can't afford to only pursue green jobs, we need all the jobs we can get.

In addition to questions about Chairman Rahall's legislation, I know many of my colleagues, likely on both sides of the aisle, will have additional matters they wish to raise with Secretary. There is a great deal that has happened during the first eight months of this new Administration and today's hearing is an opportunity to talk directly with the Secretary about matters under his jurisdiction at the Interior Department.

For example, there is great concern over the six-month delay that has been imposed on development of the new five-year leasing program for offshore drilling. Last year, President Bush and Congress lifted the moratoria on offshore drilling. Yet, in spite of the broad, bipartisan support across the country for opening additional areas for drilling, among the first acts of this Administration was to put such plans on hold for six-months. Next Monday marks the end of this six-month period and I hope the Secretary will detail for us the plans for moving forward promptly with the five-year offshore leasing program.

At the same time that new offshore leases were being delayed, other actions were taken by the Department that also harmed the production of more American energy and creation of jobs. Oil and gas leases were suddenly withdrawn in Utah, oil shale research that would create new jobs in Colorado, Wyoming and Utah were delayed, and $31 billion in higher taxes on oil and gas production were proposed in the President's budget. I know there are Members of the Committee who wish to try and understand how the spoken words of this Administration in support of more energy production match-up against their actions to block and delay it.

There is also the $3 billion in economic stimulus funds that the Department received. I'm sure many on the Committee are interested in hearing how this large sum of money is being spent and how many specific jobs have been created.

So, in the interest of allowing as much time as possible to hear from the Secretary, I'll conclude my remarks by again thanking the Chairman for holding this hearing and the Secretary for appearing before us.

The CHAIRMAN. Thank you, Doc. Members are reminded that pursuant to Committee Rule 3(c), they are required to limit their remarks to the subject matter under consideration today. Members are also advised that the Chair will be strictly enforcing the 5-minute rule during questioning, and that Members will be recognized in the order in which they arrived.

It is now my honor to recognize a dear friend to each of us on this Committee, both sides of the aisle, and a former Member of the Congress of the United States, and now the 50th Secretary of the Department of the Interior, and the 9th with whom I have served, the gentleman from Colorado, The Honorable Ken Salazar. Mr. Secretary, welcome.

Secretary SALAZAR. Thank you very much, Chairman Rahall.

The CHAIRMAN. Let me mention who you are accompanied by: The Honorable Wilma Lewis, Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior; The Honorable Bob Abbey, the Director of the Bureau of Land Management; and Ms. S. Elizabeth Birnbaum, the Director of the Minerals Management Service. Is that correct?

Secretary SALAZAR. That is correct.

The CHAIRMAN. Thank you. You may proceed.

STATEMENT OF HON. KEN SALAZAR, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WILMA LEWIS, ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR; BOB ABBEY, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR; AND S. ELIZABETH BIRNBAUM, DIRECTOR, MINERALS MANAGEMENT SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Secretary SALAZAR. Thank you very much, Chairman Rahall and Ranking Member Hastings, as well as members of the Committee on both sides of the aisle, Democrats and Republicans. I worked with you on many issues. I know there are actually three members on this Committee from my home State of Colorado, Congressmen Lamborn and Coffman and Congresswoman Diana DeGette. And so it is good to have an opportunity to work with all of you as we work on one of the most important and signature issues of the 21st Century. And I hope that today's hearing is only a beginning of our conversation that will take us over the weeks and months ahead to really grasp a new reality for the energy future for the United States of America. And this is a good beginning.

I wanted my staff to be here with me today because they are not only my staff, but they are the leaders within the Department of the Interior; and you as Members will be interfacing with them in the days ahead as we craft comprehensive energy legislation for our Nation.

To my right, Wilma Lewis, who is the Assistant Secretary for Land and Minerals, appointed by President Obama. She was confirmed by the Senate in August. She had worked at the Department of the Interior as the Associate Solicitor. She also had served as Inspector General for the Department of the Interior. That is an important point to make, an important factor in my selection of her to run this important part of the Department because of the ethical lapses that have been a part of the Department of the Interior over the last 8 years. Her past work as U.S. Attorney—she was a United States Attorney for the District of Columbia—will also be helpful to us as we manage this end of the Department. Her 28-year professional experience will be very helpful to all of us.

Bob Abbey, to my left, appointed by the President, confirmed by the Senate to be the Director of the Bureau of Land Management, brings with him 30 years of on-the-ground experience running the Bureau of Land Management. He knows the lands and multiple-use issues of the Bureau of Land Management throughout the country like no one else and will be helpful to us as we address the myriad of issues that come before this Committee.

And Liz Birnbaum, appointed to be Director of the Minerals Management Service by President Obama and me. She has 20 years of experience in natural resource law and policy. She has actually been a staff member here in the House, including working with the House Committee on Natural Resources. She also served in the past in the Solicitor's Office as a lawyer in the Department of the Interior, and most recently was a staff director for the Committee on House Administration here in the House. She will be one of the team members that will help us straighten up what I believe

has been a significant mess that we inherited within the Department of the Interior.

I wanted them to be here today because I wanted them to hear from you. And I want them to be part of the team as we try to put together the framework for energy development and those responsibilities that the Department of the Interior has as we move forward.

Let me finally just make a comment, some comments that I want to make about the Department of the Interior. The Department of the Interior is a large Department. We oversee 20 percent of the land mass of the United States of America. We oversee 1.75 billion acres of the Outer Continental Shelf.

Congresswoman Diana DeGette, good morning.

We have responsibilities in lots of different ways that I know many of you are interested in. In the U.S. Fish and Wildlife Service, since the days of T.R. Roosevelt and his beginnings on the fish and wildlife and the protection of fish and wildlife, we now have 550 wildlife refuges around the United States of America that cover 150 million acres. Our national parks, which have 391 units, are visited by over 300 million people a year, and are in every one of the States of the United States of America, with the exception of Delaware, and we are working on a national park in Delaware.

Our Bureau of Land Management oversees over 250 million acres of land, much of it in the Western States in places like Utah, Nevada, Colorado, other States where a very significant percentage of those lands are overseen by the Bureau of Land Management.

Our other agencies include the U.S. Geological Survey which has a huge role with its 10,000 scientists in helping us understand the realities of climate change on issues like carbon sequestration, biological sequestration and the like.

And so as we move forward in this time under President Obama's Administration, we look very much forward to working with the Members of Congress as we tackle the difficult issues of an energy future for America, as well as addressing the issues of climate change, which, while they may be debatable issues—and certainly the debate is one that is ongoing and healthy—they are issues which we must grapple with, they are issues that we cannot afford to fail in.

I want to very quickly touch on energy production which is really, I think, at the heart of what you are trying to accomplish with the CLEAR Act here, Mr. Chairman, and others of you who care so much about this issue. We at the Department, since we came on in January 21 when I walked in, have moved forward with the energy production, both on the renewable energy front as well as with conventional energy.

I want to spend just a minute speaking to this Committee about that, because they are in many ways new beginnings for the Department of the Interior, but also a continuation of the programs that were already in existence. In terms of new beginnings and renewable energy, it is a new page that we have turned for the Department of the Interior, because in the past this Department was very much focused on issuing leases on oil and gas, and that was about the end of the energy production programs of the Department of the Interior. We have a new beginning as we attempt to

harness the power of the sun, the power of geothermal, the power of the wind and the other power of renewable energy within the Department, and through existing authorities that we already have and support from Congress, we have moved aggressively on this agenda. I won't go through all the detail of it. Some of it is in the written testimony, but we are fast-tracking solar, wind, and geothermal energy projects throughout the country. We have set aside 1,000 square miles of land for intensive study for solar energy production in States in the Western part of America. We have over 20 applications for large-scale solar and wind and geothermal commercial facilities that we are processing and have put on the fast track and hope to have those permitted by the end of next year.

Our expectation is that those renewable energy, clean energy jobs or projects, will create as many as 50,000 jobs here in the United States of America. And so we are not waiting. We have moved forward with all of our power to develop the new energy frontier for the United States of America.

At the same time, it is important to remind this Committee that we have moved forward with the development of conventional energy resources. I hear from some Members of Congress from time to time that we have abandoned conventional oil and gas production, and that simply is not the case. The facts will demonstrate that we have continued to lease for oil and gas development, both in the Outer Continental Shelf as well as in the onshore.

In the onshore we have, up to this point in time from January till now, conducted 21 lease sales. We have offered 2.4 million acres of land for oil and gas exploration and development just on the onshore alone. In the offshore, we have conducted two lease sales in the Gulf of Mexico, lease sale 208 and lease sale 210, and there we have offered 52 million acres of land or area in the Outer Continental Shelf for oil and gas exploration and production.

I think what this should underscore to Members of the Committee is that President Obama and his administration are committed to a comprehensive energy plan. We know that we will grasp the new future renewable energy. But we also recognize that the development of our oil and gas resources, and particularly natural gas, are a very important part of us pulling together a comprehensive energy plan. That is what the President spoke about during the campaign. That is the charge that he has given to all of us who are working on this agenda on his behalf.

We need to move forward with an effective energy plan. But at the end of the day we will address the cardinal goals which he has talked about, and that is that we must reduce our dependence on foreign oil, something which, whether it is Chairman Rahall or Ranking Member Hastings, we have been on this bandwagon for a long time. But frankly, the United States of America has failed decade after decade. The time for failure is over on our need to get our independence from foreign oil.

Second, we need to create clean energy jobs and energy jobs of all kinds here in the United States of America. And we are sending over $400 billion a year to places far away every year as we import oil. That is money that could be helping us create our own energy future and a strong economy here in the United States of America.

And third, the reality of the dangers of pollution to our planet and to our children is something that we have to grapple with. We have to grapple with that here in this country, and obviously it is something that the Congress has been engaged in. So, our hope is that through the Department of the Interior, through the land resources that we manage on behalf of the American people, that we will be able to contribute to that energy future.

I want to speak just a little bit about—make three or four quick points on the legislation which is before us or before the Committee this morning. They raise important questions. The legislation that is under consideration raises important questions both about the organization of the Department of the Interior, as well as how we make sure that the United States of America collects a fair return for resources that are owned by the American taxpayer. These are fundamental questions.

The question of royalty rates. Last year, in the Gulf Coast of Mexico, the royalty rates were raised over 18 percent. On the onshore, they have not been raised for a long time, and they remain at 12.5 percent where they have been for a very long time, so there is a question of royalty rates. There is a question of how we approach the simplification of royalty rates. Is the way in which royalty rates are being calculated the appropriate way, or is there a better way for us to calculate those royalty rates?

Renewable energy fees and royalties. How do we charge for the use of public lands or for the use of the ocean or wind energy, for example, off the Atlantic? How do we charge for the use of those public assets as we produce energy for the United States of America? What is the then appropriate end use of those revenues that are generated from our public lands? Is the appropriate use to invest some of those monies back into land and water conservation as has been done in the past under LWCF? Are there changes that are important to be made as we look at these revenues that come into the United States of America Treasury, both with respect to conventional energies, as well as with respect to renewable energies? Those are very important questions.

Within our Department, how do we best organize and how do we work with our sister agencies, including the Department of Commerce, with respect to what happens in the oceans? How do we bring MMS together to have a more synchronizing and less siloed approach to dealing with the issues of leasing and royalty collection? Those are all issues that this team is working on.

The people who are at this table with me were not confirmed until right before the Senate adjourned for its recess, but they are working on this full-time all the time, and I expect that we will have many more announcements with respect to organization.

I want to make one announcement this morning and that is with respect to the Royalty-In-Kind program. The Royalty-In-Kind program has been a blemish, in my view, on this Department, and it really has been the source which both the Office of Inspector General and the GAO have pointed out have created problems and ethical lapses within the Department.

As Chairman Rahall pointed out in his comments, you know, the occurrences that happened at MMS in the last several years where there were allegations of sex and drugs and a whole host of other

inappropriate conduct regarding employees of MMS and the industry, are issues of concern. They are issues of concern to this Congress. They are issues of concern to me as Secretary of the Interior. And so we have moved forward and tried to address those issues. We have set forth new ethics guidelines to all of the employees who work throughout the Department, including those who work at MMS. We have assigned a full-time ethics lawyer to basically provide guidance and advice to the employees who work at the MMS facilities. And in addition to that, my decision is it is time for us to end the Royalty-In-Kind program.

The Royalty-In-Kind program was set up at a time when people thought that that was a good way for the Department of the Interior of the United States of America to make more money essentially by taking product instead of taking the royalty price for the oil that was being sold. But we certainly don't do that in the timber arena. We don't stockpile, if you will, timber assets and then go out to the market and try to figure out how we can make more money from the sale of the product.

We don't do it in the grazing arena, for those of you from ranching country, where we don't compile all of the grazing assets when we go out and try to figure out how we ourselves are going to raise the cattle and then go ahead and get a higher return for it.

My view of the Royalty-In-Kind program is that we should end it, and because it is created through administrative order and the authority which I have as Secretary, I do intend to terminate the Royalty-In-Kind program. And as I terminate the Royalty-In-Kind program, my comment to the members of this Committee is to ask you to continue to work with us as we move forward with the broader issue, because the Royalty-In-Kind program and its termination is only one thing that we have to do with respect to how we address the whole issue of royalties from oil and gas production on our public lands.

There are many other issues out there, including royalty simplification. How do we make the collection of royalties more transparent and easier to do and less subject to the kinds of issues that both the OIG and the General Accounting Office have raised?

So, my hope is that as I move forward, working with Assistant Secretary Lewis and Director Abbey and Director Birnbaum, that we will be able to come up with a management organization, and a set of recommendations around royalty collections for the United States.

And with that, Mr. Chairman, I would be happy to take questions.

[The prepared statement of Secretary Salazar follows:]

Statement of The Honorable Ken Salazar, Secretary, U.S. Department of the Interior

Introduction

Thank you, Chairman Rahall, Ranking Member Hastings, and Members of the Committee. I am here today to discuss H.R. 3534, the "Consolidated Land, Energy, and Aquatic Resources Act of 2009." I look forward to working with you and the Members of this Committee over the coming weeks as we continue a dialogue on this legislation.

Background

With its significant land, energy, and natural resource management responsibilities, the Department of the Interior is helping to lead as the United States achieves the President's goal of energy independence. The Department manages 500 million acres of land, one-fifth of the land mass of the United States, and another 1.7 billion acres of the Outer Continental Shelf. This land base includes areas which boast some of the highest quality renewable energy resources available for development today: solar in the southwest; wind in the Atlantic, on the Great Plains and in the west; and geothermal in the west.

The BLM has identified a total of approximately 20.6 million acres of public land with wind energy potential in the 11 western states and approximately 29.5 million acres with solar energy potential in the six southwestern states. There are over 140 million acres of public land in western states and Alaska with geothermal resource potential. There is also significant wind and wave potential in our offshore waters. The National Renewable Energy Lab, a Department of Energy national laboratory, has identified more than 1,000 gigawatts of wind potential off the Atlantic coast "roughly equivalent to the Nation's existing installed electric generating capacity—and more than 900 gigawatts of wind potential off the Pacific Coast. The scope of the Department's land ownership also gives it an important role, in consultation with relevant federal, state, regional and local authorities, in siting the new transmission lines needed to bring renewable energy assets to load centers.

Since the beginning of the Obama Administration, the Department has been focused on these issues and has set Department priorities for the environmentally responsible development of renewable energy on our public lands and the OCS. Industry has started to respond by investing in wind farms off the Atlantic seacoast, solar facilities in the southwest, and geothermal energy projects throughout the west. Power generation from these new energy sources produces virtually no greenhouse gases and, when installed in an environmentally sensitive manner, they harness abundant, renewable energy that nature itself provides and with minimum impact.

Renewable Energy Successes

On March 11, 2009, I issued my first Secretarial Order that made facilitating the production, development, and delivery of renewable energy on public lands and the OCS top priorities at the Department. These goals will be accomplished in a manner that does not ignore, but instead protects our signature landscapes, natural resources, wildlife, and cultural resources, and working in close collaboration with all relevant federal, state, Tribal and other agencies with natural resource stewardship authority. The order also established an energy and climate change task force within the Department, drawing from the leadership of each of the bureaus. The task force is responsible for, among other things, quantifying the potential contributions of renewable energy resources on our public lands and the OCS and identifying and prioritizing specific "zones" on our public lands where the Department can facilitate a rapid and responsible move to significantly increased production of renewable energy from solar, wind, geothermal, and biomass sources, and incremental or small hydroelectric power on existing structures.

The task force is prioritizing the intra-Department permitting and appropriate environmental review of transmission rights-of-way applications on public lands for transmission lines to deliver renewable energy to consumers. The task force is also working to resolve obstacles within the Department to renewable energy permitting, siting, development, and production on federal lands without compromising environmental values.

In April, Chairman Wellinghoff of the Federal Energy Regulatory Commission and I signed an agreement clarifying our respective agencies' jurisdictional responsibilities for leasing and licensing renewable energy projects on the U.S. Outer Continental Shelf. In late June we offered five limited leases to construct meteorological towers in support of offshore wind energy development off the coasts of New Jersey and Delaware, the first of their kind offered by the federal government. I am pleased to announce that the first of those leases has been signed, supporting our first OCS wind development. Senate Majority Leader Harry Reid and I also worked together to put forward "fast-track" initiatives for solar energy development on western lands.

Responsible Development of Conventional Resources

At the same time, we must recognize that we will rely on conventional sources—oil, gas, and coal—for a significant portion of our energy for many years to come. We have made great strides balancing the accelerated development of clean energy from renewable domestic sources with the responsible development of conventional

energy sources while protecting our treasured landscapes, wildlife, and cultural resources.

Since January the Department has offered more than 2.4 million acres on our public lands for oil and gas development in 21 lease sales, with over 780,000 of those acres going under lease and attracting more than $70.2 million in bonus bids and fees. We have plans for another 19 sales in the remaining months of this year. On the Outer Continental Shelf, we offered 52.9 million acres in two lease sales in the Gulf of Mexico; leased a total of 2.7 million of those acres; and collected total revenue of more than $815 million.

I extended the public comment period on the Draft Proposed 5-year Program for the OCS produced by the previous Administration until September 21, 2009. At that time I also requested from Departmental scientists a report that detailed conventional and renewable offshore energy resources and identified where information gaps exist. I have held regional meetings with interested stakeholders to review the findings of that report and gather input on where and how we should proceed with offshore energy development. The additional information and input from states, stakeholders, and affected communities gained during this process will allow us to adopt, in a timely fashion, a truly comprehensive energy program for the OCS to succeed the existing 2007-2012 Program.

The Consolidated Land, Energy, and Aquatic Resources Act

The Consolidated Land, Energy, and Aquatic Resources Act is a comprehensive bill that would make significant changes in the way the Department carries out its energy and mineral leasing programs. The Administration has not had an opportunity to fully analyze and consider the impacts of many components of this legislation.

However, we are in agreement with the legislation's primary goals of ensuring a balanced and responsible approach to energy development on our public lands and that dependable oversight and sensible reform of mineral royalty programs is achieved. Like you, I support reforms of the mineral leasing process and programs that will enable us to manage our onshore and offshore resources more effectively and responsibly. In my statement today I will speak generally about several of the major issues addressed by the bill and the work that we are doing to address these issues.

I appreciate the opportunity to work with you on this legislation.

Mineral Reorganization and Reform

Title I of H.R. 3534 would carry out a statutory reorganization of the Department's leasing programs. I am committed to working closely with the Congress to improve our management and our programs and to fulfill our stewardship responsibilities to the Nation. My energy team has come together in the past month as the Senate has confirmed key members. We recognize that an efficient and effective leasing program is integral to both the Department's rapidly developing renewable program and the existing mineral leasing program. I believe we can accomplish many reform-minded changes to these programs administratively.

For example, I am developing options to improve the coordination between the Minerals Management Service and the Bureau of Land Management in on- and offshore leasing and revenue management policies related to domestic energy production—both conventional and renewable—from federal lands. I intend to bring needed coordination and strategic guidance to the Department's energy development programs and to its implementation of significant reforms, including recommendations for improvement from the reports of the Government Accountability Office and the Office of the Inspector General.

My Interior team is also working hard at a fundamental restructuring of the Minerals Management Service's royalty programs, including the Royalty-In-Kind program. Today I am announcing a phased-in termination of the program and an orderly transition over time to a more transparent and accountable royalty collection program. This transition will factor in the need for domestic oil supplies. This restructuring will be overseen by my Assistant Secretary for Lands and Minerals Management, Wilma Lewis, Liz Birnbaum, the Director of MMS, and Bob Abbey, the Director of the Bureau of Land Management. This team can and will properly implement these important policy decisions.

Conclusion

Mr. Chairman, I again commend you for your insight and leadership in the interests of balanced, responsible energy development that is crucial to our Nation's economy, national security, and environmental future. I appreciate this opportunity to present some of my own thoughts about the Department's energy future. And as I have stated, I am fully committed to working with you and the Committee to en-

sure that we adopt a strong and effective program that will bring us energy independence and security and move us toward a new energy economy. The principles I have laid out today will help us accomplish this task.

Thank you and I am happy to answer any questions that you might have.

CHAIRMAN. Bravo, bravo, bravo. I salute you on your announcement today that by administrative decision you will end the Royalty-In-Kind program. As you know, I've been calling for that for several years, Mr. Secretary, and I do think it will end the opportunity for mischief, or the temptation, and perhaps provide a more decent return to the American taxpayer. So, I salute you for that announcement that you just made.

I want to turn to the LWCF that you also mentioned in your testimony. I know that throughout your career in the Congress you have been an ardent supporter of the Land and Water Conservation Fund. I just wondered if you could share your thoughts with us on the importance of full funding for that program.

Secretary SALAZAR. Chairman Rahall, I think you asked one of the most important questions which this Committee and the Administration, and I as Secretary of the Interior, will grapple with in the days and months ahead. On the one side, you have the reality that we are dealing with some very difficult times in this country relative to deficits which are inherited in a large part by this administration, deficits that have been created over the last 15, 20 years. And so that enters into this equation about how exactly we move forward with LWCF.

On the other hand, I think it is important, Mr. Chairman, to recognize that those visionaries in the days of President Kennedy really felt that the Land and Water Conservation Fund was being created in order to be able to give something back to the earth when we are taking something from the earth. And yet, in the time that LWCF has operated, we essentially have seen what is a broken promise to the American Nation relative to the failure of funding for the Land and Water Conservation Fund.

I sat in my office with Bill Grosvenor and Pat Noonan and others who were involved in the initial effort on Land and Water Conservation Fund, and they told me about the conversations with Stuart Udall and Bobby Kennedy at the time on LWCF. And the thought then and the letter that President Kennedy sent to Congress was that we would be taking resources from our oil and gas production in the Outer Continental Shelf and other places, and that that money would be invested in the Land and Water Conservation Fund for generations to come.

We are taking a finite resource from the earth. It was owned by the American taxpayer. It was important to invest it in land and water conservation and wildlife and habitat issues that this Committee is so familiar with. And yet, when one looks back at the history of LWCF it has not been funded at that level. There is an accounting mechanism that gets entered into the books every year, and if you look at the current accounting it will show that there is $17 billion, over $17 billion that should have gone into LWCF that simply hasn't gotten there. And when you compare that to the amount of money that was generated by the Department of the Interior on behalf of the people of the United States of America last

year, we collected $24 billion. And yet just a smidgeon of that gets reinvested back into the great outdoors and into the land and water conservation.

On an average year—and last year was an aberration in terms of the amount of money that comes into LWCF—on an average year it is more in the neighborhood of about $13 billion. Well, when one looks back at the history of LWCF, Mr. Chairman, LWCF was only fully funded one time, in 1977. And in 1977 it was funded to the extent of $900 million, which was the full authorization of LWCF. If that amount were to be adjusted for inflation, the amount today would be $3.2 billion.

So, I think when one looks at the needs, what we have in the United States of America, whether it is the Appalachian Range or the Great Lakes or the Bay Delta in California or the need for the restoration of rivers and urban parks and historic preservation and habitat for hunters and anglers and wildlife watchers, there is a need to have a very robust Land and Water Conservation Fund.

I am proud of the fact that the President's budget started us down that track with the idea of putting additional money into LWCF, hoping that we will get to the point where we have it fully funded. But I am very interested, Mr. Chairman, in working with you, working with members of the Committee, working with the Office of Management and Budget and others to try to get us to a point where we are making the kinds of investments in the great outdoors.

There are some members here from Colorado who I know will remember this, but Congresswoman Diana DeGette, Congressman Coffman, and Congressman Lamborn know that in my State of Colorado we created an initiative called the Great Outdoors Colorado program, and through that initiative, Colorado Springs and Denver will never grow together because of the 200,000 acre conservation program between Colorado Springs and Denver. Rivers like the Colorado River and the Yampa and the Cache La Poudre and the Fountain Creek have all been restored, and they have become part of the economic renaissance of the State of Colorado, but they also have introduced important environmental values, and we have done it in way that has protected private property and in a way that also has invested in those things that are truly important for our future.

I won't monopolize this conversation, but I want to end with just one comment on that question. There is a biography of T.R. Roosevelt which I would encourage all of to you read at some point in time. But it is a biography of Teddy Roosevelt by Doug Brinkley, which is titled "The Wilderness Warrior." When one thinks about this Republican President over 100 years ago and the legacy that he left for the United States of America that includes our wildlife refuges, our national parks—which are, as Ken Burns will shortly say—America's best idea, in my view it is time for a 21st conservation agenda, and I can think of no better source of funding than using some of the revenues that actually come from American-owned assets as those are produced and put into beneficial use to help with the funding of LWCF.

The CHAIRMAN. Thank you, Mr. Secretary.

In conclusion, I do highly commend you for your leadership during these 8 months at the Department of the Interior, for your stewardship of our public lands, and very highly commend you for your decision today to end the Royalty-In-Kind program.

Mr. Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman. And once again, welcome, Mr. Secretary. In my opening remarks, I referenced the moratoria that the Congress had lifted and President Bush had lifted on the OCS. And you also made a reference to that in your testimony. And you simply said that you developed something in a, I think, in a timely fashion.

Now, the 6-month period is up next Monday. President Obama, in April I think it was, on Earth Day, when he was in Iowa, stated, and I quote, If there is oil and gas in the United States, we should use it, end quote.

My question to you is, with the moratoria ending and with the fact that Americans, certainly last year, when gasoline went up to $4 a gallon, and Americans all across the country discovered that we have a tremendous amount of reserves in the OCS and in the inner mountain west of crude, but particularly on the OCS, what do you anticipate will come out of the end of the 6-month moratoria, 6-month comment period on Monday? And what do you mean by a timely fashion? And how will that be incorporated into an energy plan?

Secretary SALAZAR. Congressman Hastings, we hope to move expeditiously on finalizing a new 5-year plan for the Outer Continental Shelf, and we will do that in the months ahead.

We also, Congressman Hastings and members of the Committee, have always recognized that oil and gas from the Outer Continental Shelf will be part of our energy portfolio for the future. And that is part of the President's vision for our comprehensive energy plan. You will grapple with that energy plan as you all move forward, and this Committee obviously will have a major role in all of that.

I want to make two comments on timing here. First, it is important that we get it right. It is better to get it right than to get it wrong and then have to go back through the uncertainty of litigation.

I will give you the example of the 2007 and 2012 plan under which we are operating now. Subjected to litigation, the District of Columbia District Court found that the inappropriate environmental analysis had been done. This is not a crazy court that was doing this. It was a court that was just looking at the law. And it said because of the issues that have been raised here relative to the environmental analysis missing from those areas that are going to be impacted from oil and gas development, we are going to throw out the 2007/2012 plan. And they did.

And so we came back in with the Department of Justice and my Department and said we need to narrow that decision. And it was narrowed down so it didn't affect the Gulf and didn't affect other areas in that 2007/2012 plan. But it underscores, Congressman Hastings, the importance of us doing it right as we come up with a plan.

I will make some generic comments just about where we are at this point in time relative to information gathering. We will complete the 6-month moratorium on September 20. My staff, led by Wilma Lewis and Liz Birnbaum and others, will be working on moving forward with the creation of a new 5-year plan. There are realities that we know are out there. For example, on the Atlantic, we know that there is not a lot of information out there; that it has been 30 years since we have developed any seismic information on the Atlantic. On the Gulf, on the other hand, we have extensive information. We have new discoveries. So, there is huge potential.

Mr. HASTINGS. Mr. Secretary, if I may, my time is—I apologize, but my time is running out. I know Mr. Rahall wants to keep us as much as we can. But technology, new technology has certainly come into play, advantageously, from an environmental standpoint. We saw that when Rita and Katrina, for example, went through the Gulf of Mexico. So, we know that there is technology to do things environmentally right.

Now, I interrupted you when you were referencing the Atlantic. But it seems to me we certainly have the ability, I would hope that whatever you come up with would be very robust from the standpoint of utilizing these resources. If we are going to be energy independent, certainly we have to use the OCS. I apologize for interrupting you midway through, but if you would like to respond I would appreciate it.

Secretary SALAZAR. The OCS is important for us. It is part of our energy portfolio for the future and we will be devising a plan that is protective of the environment, that takes into account what the stakeholders in those affected communities want, and that takes into account the imperative which I know this Committee agrees on, and that is getting us to a new energy future for the country.

Mr. HASTINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Would it be fair, Mr. Secretary, to say you are not the first Secretary of the Interior to address the need for a comprehensive energy plan and the need to end our reliance upon foreign oil, but you intend to be the last?

Secretary SALAZAR. I want to be very much so. We want to be the last. We want to get it done.

The CHAIRMAN. Following the order of appearance, the Chair will now recognize the gentleman from California, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. And I appreciate the importance of this hearing today and to have the Secretary of the Interior here.

As the Chairman of the Subcommittee on Energy and Mineral Resources, we have held extensive hearings on the challenges facing the Mineral Management Services over the last 2 years. And clearly, the Secretary's statements this morning I find refreshing. But I would be remiss if I did not note, and I believe that the Secretary commented on it a moment ago, about his efforts with regards to restoration of the various ecosystems. The Sacramento San Joaquin River Delta area is one that is experiencing tremendous drought conditions today. The Secretary is aware of it. He has flown over it. And we thank you for your attention to it. It is a constant concern of the devastation of the impacts, economic impacts to the people in my communities of this drought, and we are going

to urge you to continue your efforts to provide that support. I know funding is being considered that would provide support for this effort.

But much more work needs to be done, and we could have a fourth dry year in California, God forbid, next year. And we are going to need all of the flexibility and the attention of the Department of the Interior to help us if, in fact, that occurs.

My questions as it relates to today's hearing on oil and gas leasing are somewhat covering a broad swath. And in the time remaining, let me get quickly to the point. Our Subcommittee has tried to look at using all the energy tools in our energy tool box. You say comprehensive energy efforts. I think we are saying the same thing. My concern is that we use—as we look at the reform in Minerals and Management Services, you talk about ending the in-kind-royalty program. In a measure that Congressman Abercrombie and I have introduced, a bipartisan bill that takes the long term in the next 10 years, the next 20 years and beyond, to reduce our dependency on foreign sources of energy and to build up this robust, renewable portfolio, that we take advantage of those revenues on onshore and offshore oil and gas leases to build that robust portfolio.

And I guess, Mr. Secretary, my first question to you is, do you believe that this comprehensive effort that we are advocating in this bipartisan approach will be realized? I mean, our environmental friends talk about this robust renewable portfolio, but they don't have, I think, a commonsense path to financing it. We are talking about using those revenues from oil and gas, both onshore and offshore, over a programmatic period of time to finance that robust renewable portfolio. Could you please comment?

Secretary SALAZAR. Congressman Costa, I very much appreciate your leadership on this issue as well as on dealing with the major water issues which many of you here have been dealing with in California, and we will continue to work with you on those.

You know, the question of how we ultimately finance the green energy economy, Congressman Costa, we have already been working on that in a variety of different ways. Through the economic recovery package, which this Congress approved, there are huge investments that are going on with respect to building up the green energy economy. And I think when you look at what is happening across the country, I can tell you that in the areas that I am most familiar with, if you look at the Atlantic coast, there is tremendous interest in what we do to stand up the offshore wind energy potential which we believe to be in the neighborhood of over 900 gigawatts off the Atlantic. And every State along the Atlantic coast has projects which they believe, many of those States, that they have already financed before taking on those projects. You are talking money. You are talking money. You are talking solar, Jim Costa.

But on the solar projects, we have many of these projects which we are standing up, including 13 solar major commercial projects in the Southwest.

Mr. COSTA. Right. I have 1 minute left or less than that, so let me quickly—I sent you a letter to the Department of the Interior to talk about the policy of allowing companies to invest in Iran that bid on oil and gas leases in the United States. The Department

provides those grants to those leases. I think it is counterproductive to encourage companies that are investing in Iran when we have an economic boycott on Iran. Have you looked into that?

Secretary SALAZAR. I will take a look at the letter. I have not seen it

Mr. COSTA. OK. And finally the CLEAR Act seeks to encourage the diligent development of resources, yet the DIO Inspector General found in a 2009 report that Interior suffers from such information systems' inconsistencies and data integrity problems it cannot credibly track what activity is occurring on these leases that are producing and nonproducing. How do you intend to fix these deficiencies?

Secretary SALAZAR. There is much that I agree in that statement that we have information systems which, frankly, have not been very good. And much of what the Office of Inspector General and the General Accounting Office have recommended are recommendations that we have under consideration and will be making the management changes to that as we move forward. And part of it is being able to track what is happening out there, both on the onshore and the offshore with respect to what is producing and what is not produced.

Mr. COSTA. That is important. My time is expired. Thank you very much, Mr. Chairman, and I will submit the following questions on the other areas and continue to look forward to working with you.

The CHAIRMAN. The gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. I thank you, Mr. Chairman. It is good to have you here. Welcome.

In your statement you made reference to energy independence and security and having a new energy program to accomplish that. So in light of that, looking at the Atlantic and Pacific coasts in particular where we had a recently expired moratorium after 30 years, which expired, can we look forward to new oil and gas permit areas off of the Atlantic and Pacific Ocean that were previously under that moratorium as we develop an energy plan that gives us independence and security vis-a-vis less imports from our country, is how I would interpret that.

Secretary SALAZAR. Congressman Lamborn, first, the offshore oil and gas potential and its contribution to the Nation's energy portfolio is something which we have very much supported in the first 7 months of this administration, and we will continue to support that, I expect, in the future as we come up with a new 5-year plan for the Outer Continental Shelf. That is point one.

Point two is, as I said earlier in response to Congressman Hastings's question, it is important that we get it right. And so part of what we did is we have held hearings in Atlantic City, in New Orleans and San Francisco, and Dillingham, Alaska and Anchorage, Alaska to get the communities to tell us what it is that their views are with respect to the development in the OCS.

In addition to that, because I don't believe that this just ought to be driven by what the stakeholders are saying, we also have had the United States Geological Survey work with the Minerals Management Services and other agencies to come up with their review of what it is that we know and what it is that is we don't know.

And so we are developing that information and we are still in the process of taking comments.

The comment period will expire on the 20th of September. And at that point, with all the information before us, I will work with this team and figure out exactly where it is that we are going to move forward on development of the Outer Continental Shelf.

Mr. LAMBORN. Well, if it is going to be released in 5 days, I am assuming it is about 99 percent done. So, can't you tell me today whether or not we are going to have new leases off of the Atlantic and the Pacific in areas that were previously under the moratorium?

Secretary SALAZAR. You know, I think it is much more complex than that. I think when, for example, you look at the Atlantic Ocean, the fact of the matter is that there is no seismic information that we have had in the last several decades that tells us what is out there on the Atlantic. It could be that it is a big to-do about nothing. And so we are going to have to make some decisions, based on the information that we have and based on what we think is realistic for us to do. But we will have a new 5-year plan.

My own view is that when you are talking about an area that is as important as the subject area of energy, and when you are talking about an area that is as large as the Outer Continental Shelf is, 1.75 billion acres of land, it is important to do it thoughtfully. And we are doing it thoughtfully and it will be part of our comprehensive energy program from the President's administration working with all of you as we move forward.

Mr. LAMBORN. Have we done any seismic off of the Atlantic or the Pacific?

Secretary SALAZAR. Not for a very long time.

Mr. LAMBORN. OK.

Secretary SALAZAR. There is a dearth of information, and that is one of the places where there is a dearth of information.

Mr. LAMBORN. And also, sort of along the same line, you made mention in your comments about up to 1,000 gigawatts of wind potential off of the Atlantic Coast and almost the same, 900 gigawatts, off of the Pacific. And I had this conversation with some folks in from the Sierra Club last week.

But if you look at the numbers, under current technology, with a tower producing 3.25—I believe it is—megawatts of energy to produce 1,000 gigawatts, you would have to have 300,000 windmills off of the Atlantic coast, and almost that same number off of the Pacific coast. And with roughly—and I am using round numbers here—1,800 miles of coast off the Atlantic, you would have 166 towers per every mile of shore. Of course that might go out 10 or 20 miles, but still you are talking about a tremendous crowding effect, I think, and possibly a tremendous environmental impact, just that sheer number of towers with all the infrastructure that goes into each one of those.

I personally don't think that it is realistic to look for 1,000 gigawatts off of the Atlantic coast. I mean, I wish it was. But I don't want to see us ignore oil and gas when we are pursuing what to me is—and pardon the pun—tilting at windmills, pursuing something that is not going to pan out.

And so, do you agree with me that off the Atlantic and Pacific coasts we should have oil and gas in addition to whatever we might in the future obtain from wind or solar?

Secretary SALAZAR. I am glad, Congressman Lamborn, that you are meeting with the Sierra Club and all of the organizations that are in the broad spectrum of your constituency.

Let me just say this about wind energy off the offshore of the Atlantic. If I may, Mr. Chairman, just take a second about this. It is absolutely true, there is no way that we are going to stand up renewable energy potential in offshore wind that the lab in Colorado, at the National Renewable Energy Lab has said is there. They have said it is almost 1,000 gigawatts off of the Atlantic. But the converse is also true that we are not going to do anything, because there is a lot that we can do.

When one looks at Norway and Denmark and the United Kingdom and the amount of energy that they currently are producing from the offshore, there are elements of great potential off of the Atlantic. And let me just mention three of them. The first is that the wind measurements that we have off the Atlantic show that it is a much higher quality wind than we have on the offshore of the mainland of the United States. It blows more steady. And so that is what our scientists are telling us.

Number two, the way that the Atlantic coast goes off from the mainland, it is a very shallow coast. And so we believe that you can actually construct the kind of offshore facilities there that have been constructed in other places around the country; not around the country, but around the world.

Number three, when you look at the energy contribution that is being made from wind energy in places like Denmark, it is very, very significant. And so that is how it is that States like New York, Delaware, New Jersey, North Carolina, Rhode Island and Maine have made this one of their highest priorities. And they have portfolio standards that they believe they are going to be able reach significantly from wind energy production, in some cases as high as 40 percent of their energy coming from wind energy.

And I guess the fourth point I would make about the Atlantic is that one of the major challenges that we face with renewable energy, Congressman Lamborn, is the question of transmission. How do you get the energy from the place it is being produced to the place where it is going to be used?

Well, one of the great positive factors that we have with the Atlantic is you basically are just bringing in a cable and plugging it into an already existing grid system. Whether it is Washington, D.C. or Delaware or New York or Boston, you can actually do that in a way that is much easier from a transmission perspective than when you are on the onshore.

So, notwithstanding that, I know there are some skeptics out there on wind energy, but it is something that can in fact be done off the Atlantic. And here it is not pie-in-the-sky kind of stuff, because when you look at what Denmark has done, for example, if they can do it, there is no reason why the United States can't get itself in the position of leadership on that issue.

The CHAIRMAN. The gentleman from Michigan on his 80th birthday is recognized.

Mr. KILDEE. Thank you, Mr. Chairman. Welcome to you Mr. Secretary, and also welcome to my former chief of staff, Christopher Mansour, who now works for you. You took one of the top people here. You have good judgment but I certainly miss him.

I appreciate the work you are doing. The Land and Water Conservation Fund has been very, very important to this Nation, very important to my State. The lands of Isle Royal, a beautiful island which became part of the United States only because of the wisdom of Benjamin Franklin, and Sleeping Bear Dunes; all these came about because of the Land and Water Conservation Fund.

What problems does the lack of full funding of the land and water conservation present? And could you give some examples where we weren't able to get some property from the Land and Water Conservation Fund because it was not fully funded?

Secretary SALAZAR. Congressman Kildee, first of all, thank you for training Christopher Mansour. He is doing a herculean job in the Department of the Interior, dealing with a whole host of issues, including, I must imagine, probably 2,000 letters that we get from the Members of Congress just about every week. So, he has a lot on his plate. But thank you for your help on that.

On your question on the Land Water Conservation Fund, we simply, in my view, have not invested enough in our major landscapes of America and river restoration and urban park ways and historic sites. And you see this throughout the country. And if we had the opportunity to make these kinds of investments, I think it would be good for the economic health of our Nation and of our States.

Yesterday, Secretary LaHood and I spoke in front of the tourism directors of the 50 States who were here in Washington, D.C. We spoke about how the quality of life and the strength of our economy was so dependent on the opportunities that we have for people in the outdoors.

The State of Montana, for example, I know gets 11 million visitors a year who go there to hunt, who go there to fish, who go there to see the great wonders of the State of Montana. It is second only to agriculture in terms of that particular economy.

And I think you can make the same argument with respect to each of our States in this Nation; that if we can take care of our outdoors, it also is a great way in which we can create economic vitality for the United States.

It also, Congressman Kildee, is in my view an imperative that is driven from a health perspective. When we have our young people connected to the outdoors, it makes for a healthier society. And today our young people are spending many hours in front of televisions and computers and yet they end up, as I understand the last statistics I saw, less than 5 minutes, frankly, playing in the outdoors. And so how we connect up our young people to the landscapes also ultimately is tied in to the health of our community

Mr. KILDEE. You know, we had similar funds in government, the highway fund. And there are 50 very visible Governors out there who are making sure we don't raid the highway fund. And I am not sure how aware they are of advocating and pushing that we fully fund the Land and Water Conservation Fund.

I think it is as important, when I travel through the country, particularly through Michigan, I know the Governors would never

let us take money from the highway fund. But very often they themselves aren't as great protectors of the Land and Water Conservation Fund as they should be.

And I look forward to working with you because you have a great reputation of concern for our natural resources. I was kind of taken back when you said the last year that was fully funded was 1977, I believe you stated. And that was my first year in Congress.

So, perhaps I bear some responsibility for not pushing harder that we fully fund that. But I look forward to working with you to do that.

Secretary SALAZAR. Thank you Congressman. Happy Birthday.

Mr. KILDEE. Thank you very much, Mr. Secretary.

Mr. MCCLINTOCK. Mr. Secretary, welcome to the Committee. It's a pleasure to make your acquaintance.

I wanted to follow up on the issue that Mr. Costa raised that affects the credibility of the Department on this and all issues, and that is the dispute over the regulatory drought in California.

As you know, this is not a minor matter. More than 200 billion gallons of water have been cut off to the Central Valley of California. These diversions have resulted in massive unemployment, water rationing, food lines in various communities. We are at the point where local communities that once boasted that they were feeding the world now can't feed themselves. I am sure you will appreciate the irony of a food line in the Central Valley where they are handing out carrots imported from China in a community that once exported carrots to China. Some farming towns like Mendota are running 40 percent unemployment.

Yet on September 9th, in a response to a Wall Street Journal editorial, you dismissed the crisis by writing, "The fish are a sliver of the problem. The pumps are already on, and pointing fingers can't make it rain."

Mr. Secretary, do you deny that more than 200 billion gallons of water have been diverted from the Central Valley to meet environmental regulations protecting the delta smelt?

Secretary SALAZAR. What I would say is that the situation in California is, frankly, in chaos because of the water issues that, frankly, have been in the making for a very long time. It was a water system that was built, frankly, to provide water to about half of the population that currently lives in California.

We are in the third year of drought; and, at the end of the day, developing a comprehensive solution that addresses the conservation needs of the Bay Delta as well as providing additional water supply is an agenda that we have to figure out together. And I do think that finger pointing doesn't get us to that kind of a comprehensive solution.

We are working in my Department to facilitate a number of different projects, including those that Congressmen Costa and Cardoza and Napolitano have said were very important, such as the Two Gates project, as well as the investment of money into water conservation and water banking and a host of other things.

On the 30th of September, I will be meeting with the leadership involved in these water issues in California here in Washington. I have appointed David Hayes as the Deputy Secretary of the Interior to focus on this issue. I have a person on the ground trying

to pull things together. And, at the end of the day, I think that what has happened is that California today and its water issue is suffering from the fact that it did not have the kind of attention that it should have had or the leadership to try to bring in the different values that are being debated in the future of the Bay Delta, one of those values being water supply, making sure there is water for agriculture.

So, I hope—and we have been working closely with the Governor—that we are able to come together with a comprehensive way forward with respect to water supply for the State of California.

Mr. MCCLINTOCK. No one would argue for the need for additional water facilities, but I think you would have to agree that 200 billion gallons of water would have made all of the difference in the world in the Central Valley if it hadn't been diverted for the delta smelt. And while you are correct that we are in the third year of a drought, it is a relatively mild drought. Our reservoirs have received about 80 percent of their normal amount of water. The precipitation of the northern Sierras has been about 95 percent of its yearly average.

How do you explain the fact that in far more severe droughts in 1977 and 1991, the Central Valley Project was delivering 25 percent of its water and today it is only delivering 10 percent?

Secretary SALAZAR. We are doing everything we can under the law to deliver as much water as we can and to facilitate things such as water transfers that will provide water supply to the communities that are affected. There are water rights issues, including the fact that many of the farmers who have relied on water have a very junior water right within the scheme of water rights in the State of California.

Mr. MCCLINTOCK. Doesn't the law provide for the waiver of these regulations in an economic emergency, and why isn't the Department following through on that?

Secretary SALAZAR. The law does provide for a God Squad to essentially override the requirements of the law.

My own view—I have said this before; I will say it here today—is that that is an admission of failure; and, frankly, it would be a way in which we ultimately would not address the comprehensive nature of the issues that need to be addressed in the Bay Delta and conversations that I have had with Members of the California delegation. I think it is recognized, for example, that the huge water quality issues that are affecting the Bay Delta, including urban runoff and a whole host of other things are also contributing factors to the species issues that we have today.

Mr. MCCLINTOCK. I think the Central Valley would define failure as 40 percent unemployment in Mendota and an agricultural industry that has literally been brought to its knees. Thank you.

The CHAIRMAN. The Chair will note that it was the Minority that first broke the Chair's warning about going outside of the jurisdiction. I guess I will have to allow the Majority to do that as well.

On another point, just very quickly, Mr. Secretary, I have been advised—and again warned by the gentlelady from Guam—that when you are referring to the 50 Governors, that we also have to

recognize the territories and they have governance as well, which means we have 56 Governors.

The Chair recognizes the gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Mr. Secretary, let me first tell you how many of us are pleased with the administration of your Department, many initiatives, much movement in the first 7 months with an Interior than we saw for the previous 10 years. So, I want to congratulate you for that and for the initiatives and the leadership that you are lending to many issues and, in particular, to the public lands.

The question, if I may, Mr. Secretary, is this: We are going to realize—I think some of the maps that came out initially of all of the unharnessed potential that we have, particularly in wind and solar on the public lands—that with the potential comes the inevitable conflict in the protection and preservation of very sensitive land and the need to get renewables on the ground as quickly as possible, as you indicated in your opening comments.

How are we going to mitigate that? Is there a way to prioritize which land is on the immediate list and which other public land is going to require more attention and mitigation? And in the language under title V, do we need authority and exclusion to exclude certain lands, whether they be wilderness, wildlife corridors from the potential of development?

I see that there will be conflicts in those areas, and I know you have anticipated them. How are you approaching that, sir?

Secretary SALAZAR. Congressman Grijalva, I appreciate that question. It is a very good question and something that we are very much focused on.

And let me reiterate what I said. I do believe that, when history looks back at this period, we will have stood up for the renewable energy potential of the Nation on solar, geothermal, wind—and much of that will occur on public lands.

Now, as we engage and embrace that imperative, it is also important for us to do it in a way that recognizes that we should not do it in a helter-skelter way or a lottery way or whatever comes in the door that we end up taking but that we do it in a thoughtful way and in a proactive way; and we believe we have the authorities to do that.

An example that I will throw out to you is we are currently doing with a thousand square miles that we have set aside for an intensive environmental analysis through a programmatic environmental impact statement. In those thousand square miles, what will happen is we will look at those spaces that are best suited for the standing up of solar energy projects on the public land and those areas within those thousand square miles which are not. In my view, it would be inappropriate for us to have solar energy projects located on our national monuments or places where we have sensitive and ecological values that we are trying to protect.

In many ways, Congressman Grijalva, I think what the Nation and all of you who are Members of this Committee and Congress should look at as we look at the renewable energy future is to think about the analogy of a local land use planning process, local land use planning process, whether it is a city in Colorado Springs or Tucson, Arizona.

They will go through and, frankly, make determinations about where it is most appropriate for the siting to occur. And so you don't put a house next to an industrial factory any more because of the way that we do land use planning at the local level. We need to do that kind of land-use mining at the land-scale level, and that is what we are committed to doing within the Department of the Interior and do believe we currently have the authority to do that.

The CHAIRMAN. Mr. Coffman.

Mr. COFFMAN. Secretary Salazar, welcome to the Committee. I just want to thank you for your long service to the State of Colorado as our former Attorney General and then our United States Senator and now the country's Secretary of the Interior.

You know, as somebody who served in the first Gulf War and more recently in Iraq, I am more concerned about energy independence as it relates to national security. Currently, we import more than 60 percent of petroleum that we use and nearly 90 percent of the uranium that we use for nuclear energy.

Secretary Salazar, in your time at the Department of the Interior, you have blocked domestic energy development

across the board. On February 4th, you canceled approved oil and gas leases in Utah. On February 10th, you essentially restored the moratorium on the Outer Continental Shelf by delaying the 5-year leasing program. On February 25th, you stifled the development of oil shale by officially denying oil shale research. On July 20th, you placed a moratorium on mining in an area containing 40 percent of our Nation's uranium supply. And, since taking office, your agency hasn't approved a single new solar project, even though the Department is facing a backlog of almost 200 applications.

So, we can't drill on shore, we can't drill offshore, we can't develop oil shale, we can't develop nuclear, and we can't develop renewables by solar. Mr. Secretary, when will Americans develop American energy?

Mr. SALAZAR. First of all, my good friend—since we are all good friends in Washington—I would like to say that I, too, very much enjoyed serving with you and being your lawyer. You didn't get in trouble. I was your Attorney General. It is good to see you here in Washington.

Let me just say, on the other hand, I totally disagree with your characterizations of our action.

I think when you consider in the opening statement the fact that we have leased out over 2 million acres on the onshore, made available over 50 million acres as well on the Outer Continental Shelf, you see a development part of our agenda in developing a comprehensive energy plan.

Let me also say that you, in your service in Iraq, which I very much admire, know that this country has absolutely failed, as it did in the last 8 years, to get us to any sense of energy independence. You and the members of this Committee will know well President Nixon's timing in coining the term "energy independence" and President Carter saying that we needed to embrace energy independence with the moral imperative of war; and, in the decades that have passed since then, we have gone from 30 percent importation of our oil and now the last statistic I saw was at 67 percent.

So, the fact is we have been living on a very failed energy policy; and that is why it is imperative that we move forward with the vision that President Obama has, that this time we will not fail.

And to Chairman Rahall's question, I do want to be the last Secretary of the Interior that does come before this Committee and says we want to get to energy independence. We are going to get it done, and we are going to get it done in a lot of different ways.

With respect to specific issues which you raised on the Utah lease sale, many of those leased parcel parts are going forward. The fact is that I don't believe that we should drill everywhere, because not every place is appropriate to drill. We shouldn't be drilling near Arches National Park and Canyonlands and Dinosaur. Those are important treasures that we need to protect.

With respect to the Outer Continental Shelf, in my view, when you are talking about 1.75 billion acres of ocean, you should not simply do it with a 60-day comment period and you need to be thoughtful in terms of how you move forward with OCS. As I said earlier, we have moved forward to push development on the OCS in a number of different ways, including litigation.

Mr. COFFMAN. If you could give us specific dates on when you move forward with the Outer Continental Shelf with additional R&D leases on oil shale and also solar projects—if you could give us dates on those, I would appreciate that.

Secretary SALAZAR. Oil shale, we are looking at moving forward with research and development leases on oil shale. Again, there are issues there; and I don't believe we should engage in the wholesale giveaway of public lands, which is what the previous administration did.

With respect to the OCS, I commented on that. We currently have a plan in place, and we are issuing leases under the plan on the Outer Continental Shelf. We will have a new plan in place and will be putting it out over the next several months.

The CHAIRMAN. The gentlelady from the Virgin Islands, Dr. Christensen.

Mrs. CHRISTENSEN. Thank you.

Welcome to the Secretary, and I appreciate your opening statements which I think touched on many of the issues that I was concerned on. I am very reassured by you and your team that those issues that we have been trying to deal with in the 12 years that I have been on this Committee, the royalties and leases, the Energy Department and so forth, will be made more efficient, accountable, and transparent under your administration.

I want to take a point of personal privilege, though, to especially welcome the Assistant Secretary Wilma Lewis, who is from the Virgin Islands, a person of impeccable credentials and character. I know she will be a great asset to you as you move forward with the issues that we are discussing this morning and in other areas in your Department.

So, we just—I don't have any questions. We look forward to working with you on this. Our Chairman has introduced the CLEAR Act; and under his leadership this is going to be a very productive partnership, I can see. I am particularly pleased that you support many portions of the bill. I am particularly interested in the Regional Outer Continental Shelf Councils that will employ

the use of marine spatial planning, capturing a holistic view of our resources to guide OCS development and the full support of funding the Land and Water Conservation Fund and Ocean Resources Conservation and Assistance Fund, something that we have been waiting for for a long time.

So, I just want to commend your leadership, welcome you and your team, and look forward to working with you.

Secretary SALAZAR. Thank you.

The CHAIRMAN. The gentleman from Utah, Mr. Bishop.

Mr. BISHOP. I would also like to add for the record my congratulations to Mr. Kildee. I thank you for recognizing him on his birthday today and maybe also to let people know that it is the fact that he has worked with the Pages for the last 30 years that has kept his spirit, if not his knees, in a useful condition. So, I appreciate that very much.

Mr. Secretary, this is your first appearance before us in the 8 months you have been there, and you are in fact the de facto ruler of 67 percent of my State. We only have 5 minutes to actually go through this stuff, so let me ask you the four questions I have, and I will let you answer them in the end—or, ironically enough, you can send me a written statement if you would like to. Unlike the Senate, we have a limited amount of time, and the Chairman is particularly ruthless and heartless when it comes to time, so I will speak as fast as I possibly can.

The CHAIRMAN. Only for you.

Mr. BISHOP. I sometimes feel so special in here.

The bill before us actually talks about a limitation of development, and so I would like to ask a question that deals with other issues that you have unilaterally made that deal with limitations of development. This will be administered by your Department. I also want to deal with how prior actions of your Department should indicate how this would be administered; and in your opening statement you talked about questions this brought, one of which was interdepartmental cooperation.

My second question goes directly to that issue with interdepartment cooperation. At 7 months ago, we asked for communication between the Park Service and advocacy and lobbying groups. We asked for something covering a limited period of time, specific individuals; and it was based on press reports that we had seen that bought the possibility of improprieties and lobbying between your Department and that organization. The President said he was committed to creating an unprecedented level of openness in government.

So far, I am sorry, your Department has been foot-dragging, stonewalling; and the only thing we have received is the apparently false claim that there are only seven such communications.

Now I don't know if there is something to hide in the Department—I hope not—but certainly the actions so far give that appearance, and I would love to tell people there have been no improprieties, but your Department has provided no data so far to allow me to do that.

I am told that the Department's response to another congressional office looked like this: I have four pages of the response that was given to them. Everything except the addressee and the state-

ment that this one was about a committee bill, this one was about another meeting, there was another one about an amendment, have simply been blacked out. I don't know what—I don't know if you are talking about nuclear weapons, or you are talking about national security. Maybe you are giving account information to a bank in Nigeria where you can get money back. But there are rules for redacting, and they are very specific. It doesn't cover this.

I do hope when the Department finally gives that information you don't have Rosemary Wood-style 18-minute gaps in the tape that come to us. Because, as the President said in his campaign, transparency promotes accountability, provides information for citizens about what their government is doing; and that is what we are after, what the public should be able to find out and know.

The second issue, which goes directly to your question about interdepartmental relationships and cooperation, we have also asked for certain documents relating to how the Department of the Interior is working with the Department of Homeland Security to coordinate responsibilities on our border security. Now, these documents, once again, are not a trivial fishing expedition that can be ignored. They are serious issues that the public simply needs to know.

We have obtained from the Interior a study from 2004 that has never been released to the public or Congress. It says 90 percent of the Oregon Pipe National Monument is destroyed because of drug trafficking and human smuggling. We obtained another 2002 document threat assessment that has never been shared with Congress. It says our Federal lands are a national security disaster. We are hearing reports from border patrol agents that their hands are shackled when dealing with Interior officials on Interior lands.

Yet when we request these documents and communications to find out what is actually being done, all we are getting is, once again, more stonewalling. This does not speak well for an open Department or an open government, and I would seriously like these issues to be addressed so we know what indeed is going on.

Now, third, I would like to have you look back there at the door and have the Harrison couple, if they would, wave at you so you know who they are. They are going to try and meet you in the hallway in some time. The Harrisons are from Vernal, Utah; and they have organized out there an Alliance for Public Lands, truly a grassroots group.

They met with Mr. Hayes when he was out in Vernal. He said he would meet with them again. Mr. Hayes set a time to meet with that couple. On Friday, when we called to verify it before they came here, everything was all right. The afternoon before the appointment, after they had already arrived here, your office, the Department, once again called and said Mr. Hayes could not meet with them at that time or any other time this week, once again giving me the idea that we may have open-door policies for interest groups but not necessarily for citizens.

We talked about environmental impact statements. They wish to hand to you, which is what they would have given to Mr. Hayes, what we are calling human impact statements: 150 letters from people who live in the Uintah Basin as to the direct results of the decisions that your Department has already made. These are re-

sults that is not part of legislative action, it is not part of an economic cycle, not coming from oil and gas companies but collateral commitments that have been made to those individuals.

I am going to have letters in there about a waitress who has been cut from 30 hours to 13 hours in Vernal; about the superior mud—undercarriage mud removal that went from nine to two employees.

I am talking about Heather, who is a 9-year-old who moved from your State of Colorado over there with her grandfather and mother to get a job where they had enough land for a horse as well as a yellow lab; and they lost that job and were forced to move to Vernal, in which they had to sell the horse—not for human consumption. You can be OK. And also they had to sell the yellow lab because of decisions that were made by this Department of the Interior that had a collateral damage, net result and net impact on the people of that particular area.

I am asking you if you would actually accept those documents from them finally and please look at what is happening to real human beings on the ground as a direct result of decisions the Department of the Interior has made which affects my home State of Utah.

And, fourth, I would like you to express your opinion on the particular bill before us.

I don't have time to yield back, do I, sir?

And since we don't the opportunity to have the Secretary with us very often, I have used it well.

The CHAIRMAN. Mr. Secretary, we will allow you to respond. If you would rather do it in writing, we will allow you to do that as well.

Secretary SALAZAR. I would appreciate the opportunity to respond to Congressman Bishop.

First, you are not lacking in passion, and that comes across loud and clear. And I appreciate the passion with which you represent your constituents.

Mr. BISHOP. I am lacking in documents.

Secretary SALAZAR. Sir, let me take, if I can, each of the four and just be as brief as I can.

First, on the Departmental communications, we have thousands of pages, frankly, that have been sent over, are being sent over. You are getting additional documents. So, we are getting you everything we can, and that is both with respect to your issues concerning communications between the National Park Service and the National Park Conservation Association and other entities as well as the documents you requested between the Department of the Interior and the Department of Homeland Security. So, you have gotten a lot of those documents. You are getting a lot more.

With respect to the Harrisons, I would be happy to take whatever documents that they do have.

I do have to say this with respect to the issue as you raise it. Sometimes what ends up happening is when the government does things in a rushed and wrong way you end up having consequences to human beings like the Harrisons that you don't have when you do it the right way. And what happened with those 77 lease parcels, which I know you are very passionate about, Congressman

Bishop, is that there was simply not the consultation that should have taken place there between the Bureau of Land Management and the National Park Service. And because that did not take place, there was a need to review that to assure that the other legal interests of the United States of America were being protected. We are going through a process now, and those 77 lease parcels are being screened to determine which ones are appropriate for leasing and which ones are not appropriate for leasing.

I believe that, ultimately, if we do things right, we can avoid bad consequences to people.

And, finally, on your question on the opinion of this bill, it is absolutely targeted on the right set of issues that have been raised by the Inspector General and the General Accounting Office, as well as my Department; and we will work closely with the Chairman and members of this Committee to get the bill to the place where we believe it needs to go. So, even though the Chairman is a very powerful chairman and those of you who worked on the bill have spent a lot of time thinking about this bill, we have some ideas that we will continue to try to contribute to make the bill a better bill. And I appreciate the opportunity to work with the members of this Committee in so doing.

The CHAIRMAN. The gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Welcome, Secretary Salazar. It is good to see you again, finally.

And, Mr. Bishop, I feel sorry for you but also feel sorry for me. Because I have been trying to see him for a long time, along with Assistant Secretary Hayes; and I finally saw Assistant Secretary Connor at one of the hearings we held last week. So, don't feel like the Lone Ranger.

Now that leads to a question, Mr. Secretary, as to whether are not you have enough staff to be able to do all of the jobs that are thrown at you. And I am wondering about Assistant Secretary Hayes' ability to deal with Cal Fed if he is already working on these other great issues that are before us and whether or not it is possible for you to let us know whether this is indeed going to be a problem that we may have to help with in allowing your Department, your agency, to look at whether you have enough qualified staff to complete the environmental oversight of the areas along with processing those drilling permits.

Are you going to restructure? What is it we can look forward to and how can we help?

Secretary SALAZAR. Congresswoman Napolitano, thank you for your leadership as well on the California water issues and so many other issues you work on.

We do have the staff, and we will make sure that Deputy Secretary Hayes and Commissioner Mike Connor and others are working on this issue we have. Because it is such a difficult and complex issue. You can't just wave magic wands or through platitudes resolve the water issues in California.

I have assigned a person, David Nowey, who will be there full time to work with the California interests as well as with us here in Washington, D.C., to see how we can try to come up with a comprehensive way forward on the Bay Delta in California.

Let me take the opportunity also, Congresswoman Napolitano, to say there is a reality within the Department of the Interior and that is that, in the last 8 years, because this Department was not a priority for the prior administration, that its capacity has been eroded day after day. Even when you compare the budget of this Department, we do not have the budget of this Department that the Department even had in 2001; and so we are trying to do everything we can to stand up to the new challenges that you, the Congress, and the President has placed in front of us, an agenda which I very much believe in and am working very hard on. But it is difficult.

I can give you lots of statistics about how the guts of this Department were essentially wrenched out under the last 8 years of the Bush Administration.

Mrs. NAPOLITANO. Thank you, Mr. Secretary. That was very enlightening.

While we are at the issue of energy, which we have been talking broadly on energy independence, my concern, as Chair of the Subcommittee of Water and Power, is the ability to ensure that the grids are able to produce enough energy; and if there isn't any water in the rivers and dams because of climate change, the warming, whatever, and that leads me then to title XVI. I am going to request this, with the permission of the Chair and you, a review of the title XVI budget.

There is $600 million still in backlog. Last year's budget was $9 million for this year, which, in essence, would give us roughly under 50 years to catch up. That would help relieve some of the pressure off the rivers and the dams and certainly Cal Fed, and we are not even putting that into the equation.

And by that I would also like to ensure that the Army Corps of Engineers be included at the table on some of the discussions, because they do have a relevance in the Bay Delta area, the levees. And so those are areas that, while it doesn't completely involve this particular bill, it does in the sense of energy production.

So, I would very much love to sit with you. And, yes, we have tried to get meetings. We have yet to be able to meet with your Commissioner on the issue or with your Under Secretary—we look forward to it—and certainly with you, because there are a lot of other ideas that have come forth, and we would like to be able to share them with you.

My understanding is the California Legislature has been working on this almost 24/7 to be able to come up with solutions. They haven't yet. Political will, whatever you want to call it. But that Two Gates program is going to be another way to be able to save that water for California. While there are all kinds of, still, finger pointing, I still believe that there are some solutions in sight.

But I would love to be able to sit with your agency, with you, and all of your staff to be able to follow through and be able to save some of this water to produce more energy.

I thank you for your hard work. You have had 9 months, and you have done a marvelous job. I congratulate you and look forward to working with you and having you be part of our solutions for our water problems. Thank you.

Thank you, Mr. Chair.

The CHAIRMAN. The gentleman from Louisiana, Mr. Cassidy.

Mr. CASSIDY. Thank you, Mr. Secretary.

First, I will point out that when you said—you know, I have heard your quote before: The rush to do something in a wrong way has harmful consequences for humans that would not have occurred if done in the right way. I heard that in my town hall about health care. With that said, I think you must have attended that.

The Office of the Inspector General of your Department put out this report February, 2009, Oil and Gas Production on Federal Leases: No Simple Answers. And as I looked at the Chairman's bill, it almost seems like it is running counter to your own OIG's analysis, if you will.

For example, we, in the bill, institute more regulatory barriers to production and, at the same time, express impatience that production is not happening in a more timely fashion. And yet your OIG said that onshore Federal oil and gas leases are much more difficult, time-consuming, and expensive compared to State and private leases due in considerable part to regulatory restrictions and requirements.

Among this is that there is—they speak about litigation and public opposition having a significant impact on the ability of lease holders to conduct developmental activities, and the bill before us seems to

increase the likelihood of litigation, et cetera. It says it could cause a dramatic increase in opposition that occurs even prior to lease issuances and continues throughout the development process. I will say that some of the pulling of leases already issued that you have all done seems to be consistent with your OIG's report.

And then again, as I look at this bill's impatience with the rapidity with which oil and gas is developed, the conclusions have a quote from somebody from the Colorado School of Mines. I kind of like that he is from Colorado. It says that we shouldn't necessarily do faster production but rather smarter production. You can drill everything at once, but you lose the pressure pushing it up, and therefore your total volume produced may be less than if you just, say, do a single point but allow the pressure to gradually deplete.

So again, as I look at the bill before us and I look at the OIG report, there seems to be little in the OIG report that supports some of the main tenets of this bill or, frankly, some of the approaches your office has taken today.

So, I just wanted your comments upon that.

Secretary SALAZAR. Thank you very much, Congressman Cassidy.

If I may, Chairman Rahall, may I say have 30 seconds to respond to Congresswoman Napolitano?

I appreciate the questions and wanted to just make you aware that I will have Commissioner Connor meet with you on title XVI. I think that is been in the works, and they have been trying to get that scheduled. September 30th we are trying to put together a major meeting on the California water issues and look forward to your participation and also helping us frame the agenda for that meeting.

Congressman Cassidy, on your questions relative to our own process, our view is that there is room for us to improve relative to how we are leasing for oil and gas both in the ocean as well as

on the onshore. And we have a number of recommendations, some of which are included in the bill and some of which are not, and we will work with the Committee as the legislation does move forward.

I do agree with you very much that technology has made major changes and major opportunities. What was not considered to be conceivable on horizontal drilling even a few years ago now is opening up great opportunities relative to how we can get to the resource with lesser surface disturbance.

There are private landowners of some huge lands that I am very familiar with where I know that those landowners are, frankly, doing different things in terms of oil and gas production because of technology and what is being done even on our public lands.

So, one of the things that the Assistant Secretary Lewis and Director Abbey will be doing is try to help figure out how we can best do it on public lands as well.

Mr. CASSIDY. Let me come back to the point that your OIG made that actually some of the things that delay this process is, frankly, regulation and litigation inspired by the Federal Government. And, again, it seems that this bill exacerbates some of those problems. So, on that specific question, any comments?

Secretary SALAZAR. I will take a look at the specific language that you raise.

I will say this, that it was, frankly, because of missteps that were taken in the 2007-2012 plan on the OCS that we, frankly, find ourselves in the litigation that we are in. That was done a long time ago. But the level of environmental assessment that should have been conducted with respect to that plan—according to the court. This is not according to some interest group. It is not according to the Secretary of the Interior, not according to the Congress—but that missteps were made.

Mr. CASSIDY. Now, in fairness, I understand the court fuled that it was without precedent, and previous courts had not ruled that way on that specific item. So, in a sense, the court created an issue which previously had not existed. I think I know that.

Secretary SALAZAR. What I will say, Congressman Cassidy, is that this is a very—the second highest court in the land that reached that finding unanimously, and they were judges appointed at court by Republican Presidents, and I don't think they were playing with the law. They were calling the facts and the law as they saw it.

Mr. FALEOMAVAEGA. [presiding.] The gentlelady from Massachusetts, Ms. Tsongas.

Ms. TSONGAS. Thank you, Secretary Salazar, for your very forthright and engaging testimony. I appreciate very much hearing your point of view and the new direction you are taking at the Department.

As I am sure you know, the Administration has an Ocean Policy Task Force that is in the process of determining the best way forward to develop and implement a national oceans, coast, and Great Lakes policy and marine spacial planning framework to protect, maintain, and restore these resources.

As you go about your planning process, particularly in the Outer Continental Shelf, when do you anticipate and are you looking for-

ward to the results of this task force, planning to use their findings in any way as you go about your thoughtful process, as you describe it?

Secretary SALAZAR. Congresswoman Tsongas, thank you for that very important question.

We are participating as the Department of the Interior in the Oceans Task Force. I think it is important that we take a look at what is happening with our oceans and that we move forward with the best science and the best mitigation approaches to some of the issues that we are seeing affecting our oceans today. So, I think it is a very important initiative; and I know you will be hearing more from my colleague, Jane Lubchenco, who is Under Secretary for Commerce and NOAA who will be speaking more to that.

But we are very much involved in it, and I do believe that the information coming from the Oceans Task Force will be very helpful to us relative to how we move forward on OCS planning.

Ms. TSONGAS. That is good to hear.

We have heard testimony about the grave state that our oceans are in; and as much as they are a potential resource for renewable energy, I think it is important that we take into account the impact of whatever we happen to do in our oceans. So, I am grateful to hear that.

A follow-up question really is, as you know, the Georges Bank off the coast of Massachusetts in New England is an irreplaceable resource; and I am committed to keeping it off limits to drilling. What are your thoughts as you go forward with your planning process as to how to protect very fragile ecosystems that are in our oceans?

Secretary SALAZAR. We should be able to do that both with respect to the 5-year planning efforts but then also with respect to particular projects. Because before a lease is ultimately issued for a particular parcel, before we go through the lease sale, we do additional environmental analysis, and that analysis should help us make sure that those places that have ecological values and the oceans that need to be protected are in fact protected.

Ms. TSONGAS. Thank you. I yield back.

Mr. FALEOMAVAEGA. The gentleman from Virginia, Mr. Wittman.

Mr. WITTMAN. Mr. Secretary, welcome here today. Good to have you here.

As you have heard other members of the Committee here, I think we are all on the same page as having an all-of-the-above energy policy here for the United States, making sure that we are developing our oil and gas resources here as well as renewable and alternative energy sources; and Virginia is going to be an extraordinarily important part of that. In fact, a study by a university found that natural gas production off the Atlantic coast could create over 25,000 jobs in Virginia. And Virginia is also poised to be a significant player in renewable energy, both in jobs and in manufacturing. So, I couldn't agree with you more and your statement about seeking energy independence and also making sure we stop the exporting of dollars and jobs that are related to our dependence on foreign sources of energy. So, I think this is a great way for us to accomplish that.

Looking specifically at Virginia lease sale 220, can you tell us where you are with expediting that and getting that done in a timely manner so that lease sale can take place and when do you believe that we will see energy produced from our offshore oil resources—oil and gas resources off the Atlantic coast?

Secretary SALAZAR. The question of how we move forward on the Atlantic and how we move forward with the area off the Virginia coast is something which we are currently taking a look at. And we know some things that I think you know, Congressman Wittman, and that is that we have very little information on the Atlantic and what is there and what is not. And, frankly, we don't have that information because, for 30 years, that information hasn't been collected. And so one of the active questions that we are looking at right now is how best do we develop the information from seismic so that we can make a determination as to what is there and what is not. So, I will be happy to get back to you with more specific questions on the Virginia lease sale.

Mr. WITTMAN. I think we are all anxious to make sure—in Virginia, the lease sale 220 is the first on the list of leases to be considered in the Atlantic, and we are certainly anxious to see that go forward. I think we have the ability there in Virginia both with oil and gas resources out there and our renewables to be poised to be a leader there. So, we look forward to making sure we are aggressively getting that done.

Secretary SALAZAR. If I may, Congressman Wittman, just one point that I think you put your finger on which I think is very important. I think where you will find some bipartisan support will be what we do with natural gas. I think there is significant potential there for it to be very much a part of our energy portfolio for the future.

Mr. WITTMAN. I agree. It has got to be something that we do in a timely fashion to make sure we are developing those sources to transition to that next generation of energy. So, we appreciate all you can do to expedite that process, especially off of Virginia, since we are anxious to create some jobs from that there.

The Land and Water Conservation Fund. As you know, I am a dedicated outdoors man and very interested in preserving habitat and ensuring the continued outdoor recreation opportunities for all Americans. I am interested in your comment earlier when you talked about securing full funding and dedicated sources of funding for our Land and Water Conservation Fund.

Looking at that, I would like to get your thoughts about how you think we accomplish that and how would full and dedicated LWCF funding impact the Department's efforts to provide continued outdoor recreational opportunities for my constituents?

Secretary SALAZAR. Thank you very much for the question.

In my view, Congressman Wittman, we have, as a Nation, underinvested in these wildlife areas and places where we can restore the outdoors in a way that hunters and anglers and outdoor enthusiasts can participate in. It is an area where we know from information that we have developed that we create about 6½ billion jobs a year in the United States through hunting and fishing and other outdoor recreational activities. And those things don't happen by themselves.

It doesn't matter whether it is Shenandoah or any of the other great parks or places of our Nation. They become great economic generators. All you have to do is to visit a town or a community that is close to one of our great outdoors facilities, and we know how excited they get when hunting season comes by and when the summer comes by for National Parks and those sorts of things.

So, my view is we need to make additional investments in those great outdoors, and I hope that we are able to work with the Congress to be able to find a way to do it.

Mr. WITTMAN. Just the other day at the Migratory Bird Conservation Commission, as you know, there are 34 projects that were jointly funded with the LWCF funding. It is so critical; and we know that opportunities there, especially as we see populations grow, are going to become more and more of a challenge.

So, I think the funding and the efforts there become even more critical for us to make sure those opportunities are available. I appreciate your efforts there; and, hopefully, we will stand up as aggressively as we can to make sure the resources are there for those opportunities for recreational experiences.

Secretary SALAZAR. If I may, Congressman Wittman, I think that the Migratory Bird Commission on which you sit, and you saw the investments that are being made there, it is an incredible testimony of what happens when you have the Congress and the executive working with States and private landowners; and what is happening is that we reached the billion dollar mark in investments in wildlife refugees through that Commission at that last meeting that you participated in. But through that $1 billion, there were thousands upon thousands of other organizations that contributed out of their own private money in the kinds of partnerships that really allowed us to leverage that into a multi-billion-dollar effort over the years. So, you and Senator Cochran and Congressman Dingell and Senator Blanche Lincoln have been very much a part of making that happen. Thank you.

The CHAIRMAN. [presiding.] The gentleman from New Jersey, Mr. Holt.

Mr. HOLT. Thank you, Mr. Chairman.

Mr. Secretary, as the Chairman said earlier, we applaud you for your testimony today, for the good job you are doing, the strong and good appointments in your secretariat and in the agencies and offices under you.

I won't dwell on this, but I must underscore your good words about the Land and Water Conservation Fund and your intentions to make it what it was intended to be and your comments about the Royalty-In-Kind program. That really is music to our ears and thank you very much.

I want to ask questions about the sustainable energy resources, the renewable energy resources offshore.

You came to New Jersey and presented some figures to us—I could hear jaws drop all over the room when you talked about the large amounts of wind energy in the mid-Atlantic offshore region. I think there is a real future there. And I wanted to ask if you were taking proactive steps now, not waiting for individual applications but taking steps to conduct all of the studies that might be useful in understanding exactly what that resource is and how it

could be harvested with environmental sensitivity. It is, I think, very important to what—you have addressed it in passing this morning, and I would like you to say a little bit more. I think it is very important to what the President has outlined in his energy talks.

Secretary SALAZAR. Congressman Holt, thank you very much. I appreciate your question, and I appreciate your leadership in New Jersey on this issue. New Jersey is one of 10 States on the Atlantic coast, really, that is at the point of the spear in terms of standing up this new energy potential.

In response to your question, we have two sets of data and are developing additional sets of data. The first set is a set of data that has been developed over a long period of time by the National Renewable Energy Lab, and they have done extensive analysis. It is the premier energy lab of the country.

When you have conversations with Director Arvizu at ENRL, he can tell you where he thinks we can go on renewable energy. And I think his bottom line, if he were testifying here, it is only we who can limit where we ultimately will go because there is so much potential with wind and solar and geothermal and biomass.

We have our information in terms of the wind energy potential that we have developed through the National Renewable Energy Lab. We also have developed information within our own agency through MMS, as well as through the United States Geological Survey, and that is information that we currently have that leads us to the conclusion that we have this great opportunity to move forward with wind energy.

The second answer to your question really has to do with what we are doing to make that possible. We have, since the beginning of the Administration, issued five exploratory leases, including off the shore, off the coast of New Jersey where there actually are—the construction of the pilots are going on out there to measure the exact level of the wind so that then, based on those tests, then the commercial aspects of these developments can move forward. So, we are hoping to do everything we can to facilitate this process that we have opened up.

We have opened up renewable energy offices in some places around the West. It is my hope and we are still working with OMB and others to try to figure out how we can open up a renewable energy office in the Atlantic. So, it is very much on our radar screen.

The CHAIRMAN. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Good morning, Mr. Secretary. I can't talk as fast as Mr. Bishop, but I might try a little bit of his strategy on you. So, I am going to make some statements for which I hope to receive a written response and then follow with a question that I hope you will have a chance to answer today.

This is the question for which I hope to receive a written response.

Less than 3 weeks ago, the BLM announced it was rescinding over 23,000 acres of oil and gas leases in the Bridger Teton National Forest in Wyoming. My understanding is that these leases were properly auctioned and that your Department accepted pay-

ment. My question is, what statutory authority does the BLM have to rescind the leases?

The Wyoming Range Legacy Act which passed the Senate indicated, as Senator Barrasso stated on the Senate Floor, that everyone should keep in mind that the acres currently leased or currently leased but under protest represent the area where the most promising reserves exist and that the Wyoming Range Legacy Act does nothing to touch that. Yet the leases we are talking about are the ones that Senator Barrasso mentioned.

And then, furthermore, it is my understanding that if the BLM accepts a bid at an oil and gas lease sale that the agency has a mandatory statutory obligation under the Mineral Leasing Act to issue that lease to the qualified winning bidder within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first year.

This did occur in this case, so my question that I am asking that you follow up in writing is, by what authority were these leases rescinded?

Second, I would like to commend to your attention the report of a seven-member committee on which I served under Secretary Kempthorne called the Subcommittee of the Royalty Policy Committee that dealt with mineral collections and enforcement. It was co-chaired by former U.S. Senators Bob Kerrey and Jake Garn. There was a member of the Navaho Nation on the committee. I was on the committee as the former treasurer of the State of Wyoming, Wyoming being the State that receives the most Federal mineral royalties from onshore production.

And we did an entire performance audit of the Mineral Leasing Enforcement and Collection Program. So, we looked at both BLM and MMS programs, and we came to some different conclusions than are expressed in the CLEAR bill. And regardless of whether this bill passes or not, I sure commend that study to your attention because I think we made some very good recommendations with regard to policy.

We came to some slightly different conclusions than you did about RIK. We recommended the royalty-in-kind onshore be discontinued but that offshore be continued. Because we found that when there is an excess in takeaway capacity, as there is in the Gulf of Mexico region, that the government was actually able to negotiate a better net return for the taxpayers in those situations than exists when you have a dearth of takeaway capacity.

So be that as it may, I just think there are some really good suggestions in that report that was done under Secretary Kempthorne, and former U.S. Senator Bob Kerrey was deeply involved in that effort. He attended those meetings and was engaged. So, I strongly recommend that.

And, finally, here is the question.

As you know, this bill would shift both BLM's oil and gas program as well as the MMS responsibilities to a new Office of Federal Energy and Mineral Leasing, and we looked at that in the report that I am referencing that was done under Secretary Kempthorne, and we came to a different conclusion than this bill comes to.

I would like to know, do you believe that this new Department would speed or slow the development of the approximately 70 percent of Wyoming's natural gas production and 65 percent of Wyoming's oil production that occurs on Federal lands and how?

Secretary SALAZAR. Thank you very much, Congresswoman Lummis. I know, given the State of Wyoming, your great interest on these issues. We will get back to you on the question of the authority on the 23,000 acres that you spoke about first.

Second, on the royalty policy committee which Senator Kerrey and others have served on, I appreciate the recommendation; and, in fact, that is what part of this team has been reviewing as we move forward on the reorganization of the Department. It will be part of what we will continue to work on with the Chairman and others. There are some great ideas that are included in that report.

Third, on your question as to whether this will speed up or slow down the proposal in the Office of Energy and Mineral Leasing proposed in this bill, whether it will slow it up or speed it up, my answer to that is we have to get it right. I think the most important thing that this bill is doing for us right now is it is putting the spotlight on an issue that needed to have a spotlight put on it. When one looks at the Minerals Management Service, it was created a long time ago, not created by Congress, created by a secretarial order signed by a person who was in my position at the time.

The CHAIRMAN. And yet, at the end of the day, we have given huge authority to the Minerals Management Service. And so some of the issues that are being raised in this Committee and in this bill, and which have been addressed by both the General Accounting Office and the Office of Inspector General need to be addressed. And so we need to come to some conclusion about how we are going to move forward.

At the end of the day, I think it is important for all of us who will work on this issue to keep in mind that what we want to do is we want to have a government process and a government organization here that works and that works efficiently and that works effectively. And I will be the first to say, as Secretary of the Interior, that we have a long ways to go. We have a lot to learn and we will work with all of you to put together the best organization that addresses the interests of Wyoming as well as the rest of the country.

Mrs. LUMMIS. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

The CHAIRMAN. The gentlelady from Guam, Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman and Mr. Secretary.

Along with the Virgin Islands, who earlier had introduced their Assistant Secretary, I would like at this time to share with my colleagues that we are very proud of a son of Guam who has recently been confirmed as the Assistant Secretary of Insular Areas, Mr. Tony Babauta. He served with this Committee in Congress for many years, and I want to thank both you, Mr. Secretary, and Mr. Chairman, for recognizing his talent. We in Guam are very, very proud.

Also, Mr. Secretary, I think you have done a very excellent job in the short time that you have been at the helm of the Depart-

ment of the Interior. I know that the Department of the Interior is a very important agency in our government, especially when it comes to the territories, because you oversee the territories of the United States.

I have a question here and, of course, I guess people might say I am very passionate about Guam and the territories. Currently, the Department's authorities under the Outer Continental Shelf Lands Act does not encompass the territories. So, do you and the Department support amendments to the law that would bring the territories under the OCSLA?

Secretary SALAZAR. Thank you very much for the question, Congresswoman Bordallo. First, thank you again for mentioning Tony Babauta, and it is important that this Congress has helped us move forward to make him Assistant Secretary for Insular Affairs, because the territories are places that are far away from the mainland of the United States, and yet the strategic interest and historic relationship and current relationship is so important.

You mentioned Guam, which I know you are more familiar with some of these issues than even I am. But the fact that we are moving 8,000 marines into Guam and the kind of consequence that that will have to the island and to the issues that affect it is something that is very important, and it is therefore important to have someone like Tony, and like you, being an advocate for Guam and for the territories.

Let me—with respect to the application of the Outer Continental Shelf laws of the United States to the territories, it is one of the questions that we need to grapple with and we will be formulating a position and getting something back to you on that.

Ms. BORDALLO. I thank you very much, Mr. Secretary. And thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Louisiana, Mr. Fleming.

Mr. FLEMING. Thank you, Mr. Chairman.

I want to bring to your attention, Mr. Secretary, to Title III of the CLEAR Act. It establishes a new requirement for diligent development, diligent development of Federal oil and gas leases. This seems to be an extension of the old disapproved and discredited idea of the "use it or lose it" theory from the last Congress. So, I guess part one of my questions is, can you clearly define diligent development?

Second, I want to bring your attention to your own OIG report which was released early this year talking about the lease development process. It says, and I will quote, It has many variables that are not self-evident, end quote. And quote, there is no guarantee that any given lease contains oil and gas.

The report also states that, quote, Mandating production on all Federal leases and increasing fees would not necessarily increase production and could, in fact, reduce industry interest in Federal leases, end quote.

I guess what it is suggesting here is, instead of increasing production, that this could—this idea of diligent development could actually reduce or even stop. And so after this period of moratoria, where we have not been able to drill OCS, or at least advance leasing, are we not really through more regulation achieving the same goal as the moratoria?

Secretary SALAZAR. Thank you, Congressman Fleming, for the questions. First, let me say that we recognize at Interior that just because a company acquires a lease, it doesn't mean that they are going to be able to turn that lease into production in a month or a year or even 5 years; that the phases, including the environmental assessments that have to take place, will require a significant amount of time before those lease areas are put into production. And it is also very capital-intensive on the part of the companies who are out there doing the exploration and, ultimately, the development. So, we recognize that there is that time lapse.

How you define diligent development—you know, there is an effort to try to do it in this legislation. There have been other efforts at trying to get it done. It seems to me that there is a time-honored doctrine, at least with respect to water and public lands, that it is a public resource and that you can create incentives to try to get that public resource developed.

Now, whether it is the concept that is included in this bill or some other concept, I think that it is worthy to pursue some kind of standard on diligent development. What exactly that will be and where we will end up, I don't have an answer for you today.

Mr. FLEMING. Well, just to respond to you. Of course the OIG is suggesting that perhaps that is not the intention to reduce production, but that is what the OIG expects will probably happen. So, again, what I am suggesting is that that is something that needs to be looked at; that there may be perhaps unintended consequences.

Secretary SALAZAR. I think, as with all major matters of legislation—and that is a major aspect of this legislation—it is important to be able to project the kinds of consequences. I think that is part of the analysis that this Committee and other people who are involved will do.

Mr. FLEMING. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

The CHAIRMAN. And the Chair would remind the gentleman from Louisiana as well that we have due diligence in coal development with Federal leases.

The gentlelady from South Dakota, Ms. Herseth Sandlin.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman. Thank you, Mr. Secretary. It is good to see you. As you know we have extended an invitation to you to join us in South Dakota to discuss a number of important issues particularly as it relates to the jurisdiction of your Department over the BIA and the nine sovereign tribes that I represent in South Dakota.

With regard to today's topic and the work of Chairman Rahall and the bill that is the subject of today's hearing, I was wondering: In light of the recent GAO reports and the IQ investigations, what steps has the Department of the Interior already taken to address many of the problems with the oil and gas lease management? Do we have to wait until this bill becomes law before we see more accountability in the leasing programs? Or, to put it another way—and I know my colleague, Mr. Boren from Oklahoma, was interested in posing the question this way—do you believe you can address the needed changes administratively and without legislation?

Secretary SALAZAR. Congresswoman Herseth, thank you for the question. And let me say that when I see someone like you from South Dakota, it tells me once again how important this Department is. It really is the department of all the Americas, it is not just the department of the West.

But when we look at whether it is Mount Rushmore or whether it is the Indian issues or whether it is the energy issues that affect your State, we very much have a major role in working with you on the future of South Dakota.

With respect to your question on waiting to act, we are not waiting, and we have not waited. From day one when I came in to the Department of the Interior, we went out to the Minerals Management Service and issued orders with respect to a new way of ethics, standards for MMS. We assigned a lawyer to work with our employees there. And I will say this as well. I know some of our employees are probably listening to this testimony. The fact is that 99 percent, 99.9 percent of our employees are good public servants. They work very hard every day. They are career employees. And the job that we do on behalf of the United States with our 67,000 employees is a job that I am very, very happy with. However, they were having problems in the past, and so we have taken that kind of action to try to make sure that those ethical lapses that have occurred in the past don't occur in the future.

In addition, Secretary Wilma Lewis, or Under Secretary Wilma Lewis who has just joined us, she and her team have been actively looking at a whole array of management issues, many of which are addressed in this legislation today. And there will be two tracks with respect to how we move forward. One will be a track that we can accomplish administratively within our Department and that I can do through existing authorities and secretarial orders, and we will, we are working on that and will have more on that in the near future. And the second will be organic legislative changes, which are attempted to be achieved in the CLEAR Act, some of which we will be supportive of, some of which we will have a dialogue to see how at the end of the day we accomplish what the Chairman wants to accomplish here, and that is to have a good bill with respect to energy development off of our public lands.

Ms. HERSETH SANDLIN. Thank you, Mr. Secretary.

And then along the lines of Mrs. Lummis' question, assuming the Department moves forward, either now in terms of the two tracks you described, administratively or with some of the legislative changes that are put forth in the Chairman's bill, how long would you anticipate a reorganization to take? And have there been any estimates to date in light of what you just described in terms of actions already taken and what the reorganization will cost the taxpayer?

Secretary SALAZAR. We are taking a look at those issues right now. I will give you my philosophical approach to the whole concept of reorganization. I don't think it does our government a lot of good and the people that we serve simply by rearranging the boxes, OK? That there are functions which are essential, including leasing and royalty collection and the transparency issues that are addressed in this legislation. And what we have to do is to make sure that that ultimate administrative framework that we put together ad-

dresses those fundamental issues in the very best way. There is a lot, I think, that can be done with royalty simplification, for example. We have spent a lot of time now chasing what is a very complex way of royalty collections for the United States of America. We have spent a lot of time thinking about ways in which to simplify royalty collections. So, we will be able to move forward with some of those changes, some of them sooner, some of them phased in over time. But at the end of the day, the goal here is to have a government agency that can provide efficiency and effectiveness.

Ms. HERSETH SANDLIN. Thank you very much, Mr. Secretary.

The CHAIRMAN. The Chair will advise members that we are in the process of voting on the House Floor. Two votes will occur. The Secretary does have to leave and will be unable to return. So, the remaining members, can you do it in 30 seconds?

Then I would ask—of course all members have the right to submit their questions in writing to the Secretary. He has been very gracious with his time today, well over 2 hours, and we appreciate it. And I know that he and his dedicated staff that are with him here today would be glad to respond to members' questions in writing. Am I correct?

Secretary SALAZAR. Yes, Mr. Chairman. Indeed. Thank you.

The CHAIRMAN. Thank you. And the Committee will stand in recess until 1:00, which should allow the two votes on the House Floor to occur. And then, Dr. Lubchenco will be our next witness when we come back. And another warning that she does have to leave at 2:00. The Committee stands in recess.

[Whereupon, at 12:20 p.m., the Committee recessed, to reconvene at 1:00 p.m., the same day.]

[1:10 p.m.]

Mr. DEFAZIO. [Presiding.] We will proceed now. The Committee will resume sitting and we will proceed to the second panel. And it is my pleasure to have the opportunity to introduce Dr. Jane Lubchenco, who is Under Secretary and Administrator for the National Oceanic and Atmospheric Administration, most notably; also a resident of Oregon and an esteemed professor at Oregon State University.

I assume you are on leave or something.

Dr. LUBCHENCO. That is correct.

Mr. DEFAZIO. You want to keep your day job in the background, just in case. Madam Administrator, proceed with your testimony.

STATEMENT OF JANE LUBCHENCO, UNDER SECRETARY AND ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Dr. LUBCHENCO. Thank you very much, Congressman DeFazio. It is a pleasure to see you again. Good afternoon to the rest of the Committee, Congressman Hastings, other members of the Committee. My name is Jane Lubchenco and I have the pleasure of serving as Under Secretary of Commerce for Oceans and Atmosphere, and the Administrator of NOAA.

I greatly appreciate this opportunity to testify on the Consolidated Land Energy and Aquatic Resources Act of 2009. We appreciate your thoughtful work to help strengthen comprehensive energy resource planning. We share the Chairman's goal of cre-

ating promising new jobs for Americans, achieving energy independence, while also protecting ocean and coastal resources, ecosystems, and communities.

A robust approach to energy should also protect existing jobs in ocean-dependent industries such as fishing, marine transportation and tourism.

Let me begin my remarks by touching on NOAA's involvement with energy development. Because NOAA has many responsibilities for licensing of energy development and offshore territorial waters, this bill is quite germane to our mission responsibilities. NOAA works with many energy sectors, including offshore oil and gas, liquefied natural gas, hydropower, offshore and land-based wind power, ocean thermal energy conversion, biomass, biofuels, and more.

With a long track record in using our scientific capabilities to help make offshore energy production safe and efficient, NOAA is eager to assist the Nation in harnessing clean energy from the sea. Indeed, we are pleased to already be helping many States and private firms that have requested NOAA's scientific and technical expertise.

Obviously, with all marine economic development, unintended consequences should be avoided. We take seriously our obligation under existing statutes to guard against energy activities harming marine life and ocean bottom habitats, causing acoustic impacts to marine mammals, other protected species and fisheries, producing hazards to ship traffic, interfering with weather radar and destroying undersea archaeological treasures.

We are greatly concerned that new energy production not lead to damaging oil spills. The Federal Government and NOAA must have the necessary resources and capacity to respond immediately to clean up oil spills and also address long-term social, environmental, and economic impacts of oil that is spilled.

With all of these mandates in mind, I welcome the opportunity to comment on the proposed legislation. While we applaud the intent of H.R. 3534, the CLEAR Act, our primary concern is that any legislation should embed energy considerations into the larger perspectives of other ocean uses.

As ocean uses increase exponentially, comprehensive marine spatial planning provides a means to ensure that uses are balanced and collectively provide society with the maximum return. Marine spatial planning is a tool that will help reduce conflicts, identify efficient combinations of activities, streamline decision making, provide investors with predictability, and ensure that health and productivity of ocean and coastal ecosystems are protected or restored.

Both the U.S. Commission on Ocean Policy and the Pew Oceans Commission have endorsed ecosystem-based marine spatial planning for the full range of uses, not just for a single sector. President Obama emphasized this point when in June he created his Interagency Ocean Policy Task Force, whose interim report, supported by NOAA and the other Federal agencies, will be released tomorrow. Significantly, the President directed the task force to develop a comprehensive integrated ecosystem-based approach, one that addresses conservation, economic activity, user conflict and sustainable use of ocean, coastal and Great Lakes resources. We

believe this comprehensive process offers an excellent opportunity to wisely manage multiple uses of the ocean.

In contrast to this approach, under the bill's section 602, Regional Outer Continental Shelf Councils would be required to prepare OCS strategic plans only for energy development without regard to other job-dependent ocean uses or multiple departments' legislative mandates.

Also, sections 607 and 608 would exempt certain planning and leasing processes from consideration by the proposed Regional OCS Councils. From land-based planning efforts we know that piecemeal approaches toward development often undermine comprehensive planning. We suggest altering these two sections to avoid this problem.

While as a general rule, the Administration opposes the creation of new mandatory programs, we recognize the intent of the proposal in the bill for an Ocean Resources Conservation Assistance Fund, including stepped-up efforts to protect our ocean and coastal environments.

And, finally, we support a national policy that vests NOAA with authority to provide for the sustainable practice of aquaculture. NOAA will work with the Committee to address the current ambiguity in authority and create a durable structure for a responsible aquaculture management.

We strongly oppose section 704, which would remove our authority to permit or regulate offshore aquaculture under the Magnuson-Stevens Act and would invalidate existing permits.

As you are aware, NOAA is developing a comprehensive national aquaculture policy that will focus on the protection of ocean resources and marine ecosystems, address fishery management issues, and look at promising ways to reduce aquaculture's environmental impact. This step will help provide a good structure for aquaculture to be a jobs-creating, environmentally sustainable industry for the U.S. that will help meet our Nation's food supply needs.

In summary, comprehensive energy and ocean management planning is vital for our Nation's future. Ocean resources support thousands of jobs in the commercial and recreational fishing, recreation, tourism, and maritime transportation sectors, and they present an opportunity for new clean energy jobs. NOAA supports the Committee's desire for effective management, but believes that a framework for true marine spatial planning must be more comprehensive than what is articulated in the bill.

Thank you very much indeed for the opportunity to testify. I look forward to your questions and also to working with you as you move ahead in these areas. Thank you very much.

Mr. DEFAZIO. Thank you, Madam Administrator.

[The prepared statement of Dr. Lubchenco follows:]

Statement of Jane Lubchenco, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

Good morning Chairman Rahall, Ranking Member Hastings, and Members of the Committee. My name is Jane Lubchenco and I am the Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of the National Oceanic and Atmospheric Administration. Thank you for the opportunity to testify before

you today on the Consolidated Land, Energy, and Aquatic Resources Act of 2009. NOAA appreciates the continued efforts of the bill's sponsors and the members of this committee to strengthen comprehensive planning for energy resource use both on land and in the ocean and to take action to improve the integrated management and conservation of our oceans. Comprehensive planning supports ecosystem-based management and NOAA's efforts to protect its trust resources. As part of the Department of Commerce, NOAA has a critical interest in comprehensive ocean planning that both protects existing jobs, including those in ocean-dependent industries such as fishing, marine transportation, and coastal tourism, and fosters the creation of new clean energy jobs.

While NOAA has an interest in, expertise on, and responsibilities relevant to energy planning on a variety of levels, the majority of my comments will focus on Title VI—Outer Continental Shelf Coordination and Planning—of H.R. 3534 and the importance of framing OCS activities as part of a broader strategy for integrated use of oceans. Before I discuss NOAA's comments on the bill, let me give you a brief overview of NOAA's roles in energy planning and permitting.

NOAA's Involvement in Energy Planning and Permitting

NOAA's involvement with the energy sector is wide-ranging. NOAA works with the following energy sectors: offshore oil and gas (exploration and production); liquefied natural gas (LNG); hydropower; offshore and land-based wind power; hydrokinetic ocean energy (wave, tidal, and current); ocean thermal energy conversion (OTEC); ocean methane hydrates; solar power; biomass and biofuels. NOAA provides data, scientific research, technical products, management and conflict resolution expertise, as well as operational services that are used by the energy industry, state and local governments, and agency partners for energy-related issues. Under the Ocean Thermal Energy Conversion Act (OTECA), NOAA is responsible for issuing licenses to any entity wishing to construct or operate an OTEC facility within the U.S. territorial sea. In addition, NOAA actively participates in many of the energy licensing processes by conducting a variety of environmental consultations required for federal agencies to complete energy facility licensing.

Federal agencies, states, and the private energy sector are increasingly requesting NOAA's scientific and technical expertise in coastal policy and management, fisheries science and management, Coastal Zone Management Act federal consistency reviews, Endangered Species Act consultations, and mediation. NOAA also provides a broad range of oceanographic, meteorological, and climate services used by the energy sector and federal agencies in charge of leasing and permitting projects. In the emerging field of renewable energy, industry and federal partners will need enhanced NOAA products and services in order to make reliable investments in renewable sources of energy such as wind, wave, solar and water. For example, NOAA data on weather and oceanographic patterns could inform critical siting decisions for these renewable energy industries.

NOAA's mission includes ensuring that energy exploration, production and transport in the ocean and coastal zone occur in an environmentally responsible way and that these activities minimize adverse interactions with other uses. Many potential impacts of energy exploration, production or transport impinge upon NOAA's responsibilities, including:

- physical, biological or chemical impacts on marine biota and benthic habitats;
- acoustic impacts to marine mammals, other protected species, and fisheries;
- impacts on navigation, including increased ship traffic;
- interference with weather radar; and
- impacts on archaeological and historic preservation.

In particular, NOAA has several legislative mandates to protect marine species and their environment, some of which provide strict guidance related to allowable levels of impact on living marine resources. I've included a listing of these mandates in an attachment to this statement. Under these laws and associated regulations, NOAA must examine coastal and ocean energy projects to evaluate potential and actual impacts of within the U.S. Exclusive Economic Zone. NOAA works to implement these statutes in a manner that allows it to protect, manage, and conserve coastal and marine resources, while also generating solutions that recognize the importance of the Nation's energy needs and implications for national security.

Comments on H.R. 3534

Use of Comprehensive Marine Spatial Planning

NOAA commends Chairman Rahall and this Committee for drawing much-needed attention to comprehensive energy planning, an important issue for the Nation and our ecosystems and we look forward to working with the Committee on this issue. NOAA's legislative responsibilities dictate the need to embed energy considerations

into the broader perspective of other ocean uses. The broad construct within which we believe it is appropriate to consider these issues is marine spatial planning (MSP). MSP is a tool to evaluate the suite of activities that can coexist in a place with the goals of ensuring that legislative mandates are met, minimizing conflicts, and protecting the health of the ocean for future uses. MSP is a process for determining in an objective and transparent fashion which combination of compatible human uses are allocated to specific ocean areas in order to sustain critical energy, ecological, economic, national security and cultural services for future generations. The purpose is simply to minimize conflicts among activities, identify efficient combinations of activities, streamline decision-making, provide predictability in planning investments, ensure the continued provision of key benefits to society, reduce impacts in ecologically sensitive areas, and protect the overall health of the oceans.

Both the U.S. Commission on Ocean Policy and the Pew Oceans Commission emphasized throughout their reports the necessity of a more comprehensive integration of multiple uses and the importance of framing MSP relative to the full suite of uses, not just one sector such as energy.

President Obama's June 12, 2009 memorandum that created an Interagency Ocean Policy Task Force reinforced the importance of this broader perspective. The President's memorandum directed the Task Force to develop a recommended framework for effective coastal and marine spatial planning. Specifically, the memorandum called for, "A comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal and Great lakes resources...". In keeping with the direction outlined in the President's memorandum we recommend that MSP principles be applied more broadly. Indeed, we believe that that is the only way to ensure the many legislatively mandated responsibilities in oceans are met. Over the next three months, the Task Force will be preparing its recommendations on a framework for coastal and marine spatial planning. Included as part of this process, are a series of regional public listening sessions and stakeholder roundtables from a variety of ocean use sectors, designed to hear public input on what this framework should look like. NOAA is an active member of the Task Force and believes this process offers an excellent opportunity to consider the most appropriate ways to manage for multiple ocean uses.

This bill addresses a particular and important subset of ocean uses. However, we believe it is important to consider these uses as part of a more comprehensive planning process that includes the full suite of key competing and complementary uses. An improved, thoughtful, transparent, and goal-oriented process for due consideration of multiple compatible uses will minimize future conflicts, greatly facilitate planning, and ensure overall goals can be met. In addition, there will be a need to increase synergistic relationships between existing ocean uses.

Competing uses of the ocean are developing faster than our current capacity to manage them. Rapid growth of most uses will only exacerbate existing conflicts. The prevailing sector-based management approach is being increasingly challenged to ensure healthy and resilient ocean ecosystems and the ecological services they provide to all Americans. To succeed, MSP must be designed to recognize existing and emerging competing uses as well as ensure the appropriate balance among them. MSP should be conducted in a comprehensive, holistic manner in which society's desired uses of ocean places are optimized by conscious design, not inadvertent and, possibly, counterproductive competing uses.

Of specific concern is Section 602, which creates Regional Outer Continental Shelf Councils that will prepare spatially explicit Regional Outer Continental Shelf Strategic Plans for energy development only. An alternative is to consider the critically important energy uses in a more comprehensive context. As urgent as energy needs are today, a broader strategy that recognizes the importance of energy along with other critical uses of oceans is more likely to produce long-lasting benefit to the Nation. As such, the Administration cannot support the Regional Outer Continental Shelf Councils or Strategic Plans outlined in H.R. 3534. A comprehensive, national approach to marine spatial planning must first be established.

Aquaculture

NOAA believes that aquaculture must be conducted in an environmentally responsible fashion, and that a national aquaculture policy that vests NOAA with authority to ensure that aquaculture is practiced in a sustainable fashion is the best approach. We would like to work with the Committee to address the current ambiguity in authority and create a durable structure for responsible management of aquaculture. NOAA therefore strongly opposes Section 704, the offshore aquaculture language within this bill. Section 704 would remove Department of Commerce/NOAA authority to permit or regulate offshore aquaculture under the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and invalidate existing permits that have been issued under that authority. NOAA recommends deleting Section 704 in its entirety.

NOAA is in favor of a national aquaculture policy and is currently working towards developing one. Aquaculture has the potential to provide a safe and nutritious local seafood supply to complement supply from U.S. commercial fisheries, create jobs in U.S. coastal communities, and maintain working waterfronts. NOAA believes that aquaculture must be conducted in a manner that safeguards U.S. coastal and ocean environments.

Without authority to regulate aquaculture, NOAA would be less able to implement ecosystem-based management of ocean resources and ensure the sustainability of marine fisheries. Additionally, Section 704 would create a regulatory gap because there would not be an overarching statute to address environmental and fishery concerns for aquaculture operations in the Exclusive Economic Zone. While the U.S. Army Corps of Engineers and the Environmental Protection Agency have some regulatory authority over siting and monitoring the water quality impacts of offshore aquaculture operations, and the U.S. Food and Drug Administration has the regulatory authority over the safety of aquaculture products, NOAA has the mandates, research portfolio, technical expertise, outreach and extension network, and appropriate infrastructure to ensure that such operations adequately safeguard our Nation's living marine resources. Additionally, because NOAA is within the Department of Commerce, it is well placed to balance the goals of developing an economically viable offshore aquaculture industry while protecting our Nation's valuable living marine resources and the ecosystems and communities they support.

If Section 704 is not deleted, a grandfather clause should be added, allowing existing permitted aquaculture activities to continue and the applicable Fishery Management Plans to be amended by the Fishery Management Councils pursuant to their Magnuson-Stevens Act authority. Invalidating current permits unduly interferes with existing efforts by Fishery Management Councils to manage fishery resources pursuant to existing aquaculture-related Fishery Management Plans. Furthermore, invalidating these existing permits would be detrimental to ocean conservation efforts and would negatively impact coastal community economies.

Conclusion

Comprehensive energy planning and comprehensive ocean management are important for our Nation's future, if we are to use resources efficiently and sustainably. Our ocean resources support many jobs in the fishing, recreation, and maritime transportation sectors, and present an opportunity for new clean energy jobs moving forward. NOAA supports the Committee's desire to create a framework for such management, but believes that a framework for true marine spatial planning must be more comprehensive than what is articulated in the bill. NOAA will continue engaging on these critical issues through the work of the Ocean Policy Task Force. We look forward to working with you to address these issues once the Task Force develops its recommendation for a comprehensive marine spatial planning framework. I have mentioned some of our general comments in this testimony and look forward to providing more detailed, specific comments to the Committee as this legislation evolves. Thank you very much for the opportunity to provide testimony.

RELEVANT NOAA LEGISLATIVE MANDATES FOR THE PROTECTION OF MARINE SPECIES AND THEIR ENVIRONMENT

- **Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §§ 1801 et seq.):** Pursuant to the MSA, NOAA is responsible for the conservation and management of marine fishery resources and their habitats. NOAA is also responsible for establishing programs to prevent overfishing; rebuilding overfished stocks; insuring conservation; facilitating long-term protection of essential fish habitats (EFH); and realizing the full potential of the Nation's fishery resources. The MSA requires federal agencies to consult with the Secretary of Commerce, through the National Marine Fisheries Service (NMFS), with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act." When a federal action agency determines that an action (such as issuance of a license for an energy project) may adversely affect EFH, they must initiate consultation with NMFS and prepare an EFH Assessment. NMFS then conducts the EFH consultation and responds to the action agency with EFH Conservation Recommendations to

avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. Federal agencies must provide a detailed response in writing to NMFS that includes their proposed measures for avoiding, mitigating, or offsetting the impact of the proposed activity on EFH. If the federal agency chooses not to adopt the suggested NMFS Conservation Recommendations, it must provide an explanation. Depending on the degree and type of habitat impact, compensatory mitigation may be necessary to offset permanent and temporary effects of the project.

- **Endangered Species Act (ESA; 16 U.S.C. §§ 1531 et seq.):** The purpose of the ESA is to provide a means whereby ecosystems upon which endangered and threatened species depend may be conserved, and to provide a program for the conservation of such listed species. The ESA prohibits the "take" of endangered or threatened species, with "take" defined as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Section 7 of the ESA requires federal agencies to consult with NOAA to insure "any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or adversely modify or destroy [designated] critical habitat...". If a proposed federal activity (such as the issuance of a license for an energy project) may affect a listed species or designated critical habitat, the agency proposing to issue the license must consult with NOAA and/or the U.S. Fish & Wildlife Service pursuant to section 7 of the ESA.
- **Marine Mammal Protection Act (MMPA; 16 U.S.C. §§ 1361 et seq.):** Pursuant to the MMPA, it is generally illegal to "take" a marine mammal without prior authorization from NOAA. "Take" is defined under the MMPA as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal. Except with respect to military readiness activities and certain scientific research conducted by or on behalf of the federal government, "harassment" is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal in the wild, or has the potential to disturb a marine mammal in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding or sheltering. Under the MMPA, NOAA authorizes the take of small numbers of marine mammals incidental to otherwise lawful activities (except commercial fishing), provided the takings would have no more than a negligible impact on those marine mammal species and would not have an immitigable adverse impact on the availability of those species for subsistence uses. An activity has a "negligible impact" on a species or stock when it is determined that the total taking is not reasonably expected to reduce annual rates of survival or annual recruitment (i.e., offspring survival, birth rates). In the event that any aspect of a proposed energy activity will result in a "take" the project applicant, or the lead agency acting on behalf of the applicant, would be required to obtain an incidental take authorization in advance from NOAA.
- **National Marine Sanctuaries Act (NMSA; Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. §§ 1431-1445c-1.):** The NMSA and implementing regulations regulate certain activities within sanctuaries that might cause adverse impacts on sanctuary resources. In certain cases, actions that would otherwise violate these regulations may be authorized by permit. In addition, pursuant to NMSA section 304(d), any federal agency action that is likely to injure the resources of a sanctuary (whether that action occurs within or outside of the boundaries of a sanctuary) should consult with NOAA prior to taking such action, and NOAA may recommend alternatives to the proposed action to protect sanctuary resources. These requirements apply to energy projects proposed to be located within, near, or that would affect a sanctuary. This has included LNG projects proposed in the North Atlantic, California and Gulf; oil and gas projects in the Gulf; and hydrokinetic projects in the Pacific Northwest. The Energy Policy Act of 2005 clarified that authorizations for alternative energy projects on the outer continental shelf that would occur within a national marine sanctuary would be issued by NOAA's Office of National Marine Sanctuaries under the NMSA and not by the Minerals Management Service under the Outer Continental Shelf Lands Act.
- **Coastal Zone Management Act (CZMA; 16 U.S.C. §§ 1451 et seq.):** The CZMA encourages states to preserve, protect, develop, and where possible, restore and enhance natural coastal resources. Federal actions having reasonably foreseeable effects on any land or water use or natural resource of a state's coastal zone must be consistent with a state's federally-approved CZMA enforceable policies. NOAA administers the CZMA and facilitates cooperation between states, federal agencies and others. The Secretary of Commerce, on appeal by a non-federal applicant, may override a state's CZMA objection to a federal au-

thorization or funding application. The CZMA provides incentives for states to address energy issues through ocean management/Marine Spatial Planning (MSP) efforts. States use CZMA section 309 funds to develop MSP/ocean management/energy components for coastal management programs. In addition, the section 309 grant program provides an additional avenue for NOAA's Office of Ocean and Coastal Resource Management (OCRM) to provide assistance to determine how states may want to approach MSP/ocean management/energy.

- **National Environmental Policy Act (NEPA; 42 U.S.C. §§ 4321 et seq.):** NEPA requires federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions that significantly affect the quality of the human environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA require each lead federal agency to invite the participation of other affected entities, including federal, state and local agencies, throughout the NEPA process. Furthermore, after the lead federal agency prepares a Draft EIS, it is required to "obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards." NOAA maintains jurisdiction and special expertise over marine resources as contemplated by CEQ's regulations. In those instances where NOAA receives a Draft EIS from the lead agencies (for example, the Federal Energy Regulatory Commission (FERC), Minerals Management Service, etc.), NOAA is required to comment on statements within its jurisdiction, expertise, or authority.
- **Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. §§ 661-666c.):** The FWCA requires federal departments and agencies that undertake an action, or issue a federal permit or license that proposes to modify any stream or other body of water, for any purpose including navigation and drainage, to first consult with the U.S. Fish and Wildlife Service, NOAA, and appropriate state fish and wildlife agencies. NOAA responds with comments and recommendations to conserve the fish and their habitat. The action agency then must give equal consideration to the conservation of fish and wildlife resources in making water resource development decisions. NOAA fulfills its responsibilities under FWCA by consulting with the Army Corps of Engineers on permits and water resource development projects, with FERC in decisions regarding hydroelectric project licensing, and on various other federal actions involving water resources and energy development.
- **Ocean Thermal Energy Conversion Act (OTECA; 42 U.S.C. §§ 9101 et seq.):** Under OTECA, no person may construct or operate an ocean thermal energy conversion facility located within the territorial sea of the United States, except pursuant to a license issued by the NOAA Administrator. No applications have been received, but OCRM is ramping up an OTEC program since several companies and the Navy is moving forward with OTEC pilot projects and commercial scale projects. NOAA is closely coordinating with Department of Energy and the Navy.
- **Federal Power Act (FPA; 16 U.S.C. §§ 791a, et seq., as amended by the Energy Policy Act of 2005 (EPAct 2005)):** Pursuant to Sections 10(a) and 10(j) of the FPA, NMFS has authority to recommend that FERC include measures in licenses for hydroelectric power projects for the protection, mitigation, and enhancement of fish and wildlife and their habitats. Under FPA section 18, NMFS has authority to issue mandatory prescriptions for "fishways" to ensure the safe, timely and effective passage of fish past hydroelectric power projects. In addition, NOAA may also issue mandatory conditions for the adequate protection of a federal "reservation", for example national marine sanctuaries
- **Oil Pollution Act of 1990 (OPA90; 33 U.S.C. §§ 2701, et seq.):** OPA90 greatly increased federal oversight of maritime oil transportation, and improved the Nation's ability to prevent and respond to oil spills, including contingency planning requirements for both government and industry. Under OPA90, NOAA and other federal and state agencies and Indian tribes act as Trustees on behalf of the public to assess the injuries to natural resources from spills, scale restoration to compensate for those injuries, and implement restoration. NOAA is a full partner with industry and the U.S. Coast Guard in mounting effective responses to oil spills in coastal and offshore environments. On more than 150 spills each year, NOAA scientists support response efforts with a number of scientific services including trajectory predictions for the spilled oil, identification of critical resources that need to be protected, shoreline assessment that guide deployment of cleanup teams, and weather predictions to ensure safe and effective operations. In this way, NOAA science helps industry responders make better decisions that reduce both response costs and environmental impacts. The agency also helps train responders. For example, the agency is now working

with Shell Oil and the USCG to prepare for a major "Spill of National Significance" exercise that will be held next March in New England and involves a spill scenario that threatens to oil northeast beaches from Portland to Cape Cod. NOAA also helps the oil industry by working cooperatively to resolve liability of natural resource damage claims. By working cooperatively with responsible parties, costs are lowered and restoration of injured resources is able to happen more quickly.

Response to questions submitted for the record by Jane Lubchenco, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

Questions submitted by the Majority:

Question 1: Dr. Lubchenco, your testimony states that your agency cannot support comprehensive planning for siting energy development in the OCS, such as the provision in H.R. 3534 until a comprehensive, national approach to marine spatial planning is established. Given the fact that there is increased pressure for renewable and non-renewable energy development in the OCS right now, while a comprehensive marine spatial planning effort for ALL activities will likely take years to implement, why shouldn't we take the first step now. Couldn't a comprehensive energy planning process complement a larger marine spatial process when it is finally put in place? When can we expect that the Administration will come forward with a binding requirement—either through Executive Order or regulation—to require that all federal agencies must plan together for every activity that is taking place in the oceans at the same time?

Answer 1: NOAA agrees that comprehensive planning for siting new energy development is important to our nation. NOAA is not proposing that we stop moving forward on this important goal. Exploration for new sources and planning for new infrastructure should be done responsibly and within the greater context of comprehensive and integrated ecosystem based management. It would be difficult to realize our multiple objectives if we were to implement a system that evaluates projects absent a holistic context and approach. The system we create should not cause conflict between sectoral ocean uses and activities.

President Obama issued a memorandum in June 2009 that created an Interagency Ocean Policy Task Force that was required to develop a recommended framework for effective coastal and marine spatial planning that would "be comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal, and Great Lakes resources." The Task Force's December 9 Interim Framework for Effective Coastal and Marine Spatial Planning defines coastal and marine spatial planning as "a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. CMSP identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, CMSP provides a public policy process for society to better determine how the ocean, coasts, and Great Lakes are sustainably used and protected now and for future generations." As described, we envision that coastal and marine spatial planning would include all activities including energy expansion.

Question 2: Dr. Lubchenco, while you state comprehensive energy planning should be delayed until a national approach to marine spatial planning has been adopted, your agency is now moving ahead with aquaculture in a piecemeal fashion, letting the Gulf Fishery Management Council's plan for aquaculture go into effect with no overarching standards for offshore aquaculture in place. How do you plan to develop a national aquaculture policy that fits into your broader vision for marine spatial planning and ensures that the Gulf plan is compliant with the national aquaculture policy that you have promised to develop? Why is this piecemeal approach to offshore aquaculture regulation okay, while comprehensive energy planning is not?

Answer 2: NOAA agrees with the need for a comprehensive, rather than piecemeal, approach to aquaculture in federal waters—and addressing this need is a major goal of the agency's national policy. The broad vision for marine spatial planning is a comprehensive, integrated, ecosystem-based approach to ocean management that addresses conservation, economic activity, user conflicts, and sustainable

use of the oceans. These principles will be considered in the development of NOAA's national aquaculture policy. The emphasis of this policy will be an environmentally sustainable approach to the development of aquaculture, consistent with ecosystem-based management. The policy will guide NOAA's approach to addressing the full range of issues associated with marine aquaculture, including user conflicts, ecosystem impacts, and other considerations that are addressed more broadly as part of marine spatial planning. NOAA's national aquaculture policy will facilitate a coordinated federal regulatory process for permitting aquaculture operations in federal waters that will both protect the environment and provide regulatory certainty to enable sustainable aquaculture to develop. As NOAA develops its national aquaculture policy in the coming months, the agency will examine the Fishery Management Plan for Regulating Offshore Aquaculture in the Gulf of Mexico (Gulf Plan) in the context of that policy. If NOAA determines the Gulf Plan is inconsistent with the national policy, the agency will consider appropriate action, which could include seeking an amendment or withdrawal of the plan, consistent with the Magnuson-Stevens Fishery Conservation and Management Act.

Question 3: Dr. Lubchenco, what will increases in energy development in the OCS do to the demand for NOAA's response and restoration services?

Answer 3: While increased energy production in the OCS could decrease the amount of oil spilled in the ocean as compared to the risks associated with importing foreign oil, the increase in offshore energy exploration will potentially increase the risk of oil spills from platforms, vessel traffic, pipelines, shore side facilities, and other infrastructure. NOAA, as a trustee for coastal and marine natural resources, responds to, protects, and restores resources injured by oil spills, pursuant to the Oil Pollution Act of 1990 and Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Any increase in the number of spills would likely increase the demand for NOAA's response and restoration services which include responding on-scene for extended periods of time; conducting oil spill contingency planning and participation in oil spill drills and exercises; development of updated oil spill response and restoration tools (i.e. environmental sensitivity index maps, oil prediction and fate models); and training states and others in response, shoreline cleanup and damage assessment.

Strong science is critical to effective decision-making to minimize the economic impacts and mitigate the effects of oil spills on coastal and marine resources and associated communities. Improved scientific knowledge is particularly important in the Arctic, where we have learned that many of today's standard approaches to oil spill clean-up and restoration do not apply in the cold Arctic waters, and there is a need for improved understanding and better methods to clean up, assess, and restore this fragile environment.

NOAA's ability to respond to an increased demand for its scientific expertise, products, and services that support science-based decisions to prevent harm, assess impacts, restore natural resources, and promote effective planning and prevention for future incidents would benefit from research in the following areas:.

- Improved capabilities for offshore modeling of fate and effects of spills;
- Enhanced use of remote-sensing capabilities, including satellites, Unmanned Aerial Vehicles, and ocean observation networks;
- Improved understanding of the long-term fate and effects of dispersed oil; and
- Better understanding of climate change impacts on existing ecosystems and how this will directly affect long-term restoration options.

Additional demands for NOAA response and restoration services may emerge in the OCS from offshore renewable energy development such as Ocean Thermal Energy Conversion, hydrokinetics, and offshore wind. This may be an area in need of NOAA services in the future, given the nascent state of the industry and the strong interest in developing low-carbon energy supplies. At this time, however, NOAA's efforts are largely focused on oil spill response and restoration.

Questions submitted by the Minority:

Question 1: Under this legislation, would Federal agencies be required to follow the Regional OCS Strategic Plans created by the Regional Councils?

Answer 1: This legislation does not clarify whether all federal agencies would be required to follow the Regional Outer Continental Shelf (OCS) Strategic Plans created by the Regional Councils. Section 309 amends the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344(a), to require that the Secretary of the Interior follow an applicable Regional OCS Strategic Plan as part of the Outer Continental Shelf Leasing Program. On the other hand, Title VI of the bill also does not specify how other federal agencies will be expected to consider Regional OCS Strategic Plans in their decision making. Similarly, Title VI does not indicate how or whether the pro-

visions of Regional OCS Strategic Plans are enforceable. Section 607 and Section 608 provide that the proposal, preparation, or approval of a Strategic Plan will not affect certain listed federal activities, but neither of those sections explains in what way other federal activities will be affected by Strategic Plans. It is also unclear whether there will be any recourse if a federal activity does not follow a Strategic Plan.

Question 2: Under this legislation, if a region has endangered or threatened species, could that marine environment be considered "healthy" under this legislation?

Answer 2: The presence of species listed as endangered or threatened with extinction under the Endangered Species Act of 1973 (ESA) within a marine ecosystem identified under this legislation would not require NOAA to deem the ecosystem unhealthy. Species are listed under the ESA not only due to the present or threatened destruction or modification to their habitat, but also based on commercial and scientific use, disease and predation, lack of adequate regulatory mechanisms, and other natural or human-caused factors. Any one of these factors may be sufficient to list a species, even though such species inhabit a healthy marine ecosystem that meets their biological needs. The ESA also requires NOAA to designate, with some exceptions, critical habitat for listed species. In these cases, critical habitat may be healthy and the designation allows for special management of the area to ensure conservation. Equally important, NOAA may designate and consider impacts to critical habitat that is part of the species' historical range and essential to the conservation of the species, even if such habitat is not currently occupied by the species. The ESA has its own mechanisms for analyzing and managing threats to ESA-listed species and the ecosystems upon which they depend. Under this legislation, information on the habitat needs of ESA-listed species may be one consideration in the determination of marine ecosystem health, but would not be the sole basis for, or preclude, the agency from making a "healthy" determination.

Question 3: Each State appears to have only one seat on the Regional Councils, yet each special interest group could also each have a seat. Does the Department/agency have any concerns about the creation of non-Federal entities on which a majority of the seats could be held by non-Federal or State representatives? Does the Department/agency have any concerns about a non-Federal entity, that is FACA exempt, making decisions on what areas of the country will be off limits to OCS activity? Do you support Councils having the authority to override one state's concerns?

Answer 3: In general, the most successful planning projects gather input from a wide range of stakeholders. Therefore, it is important to involve many entities, not just state and federal representatives. The size, scope, and specific makeup of a particular regional council should be carefully considered in the context of the specific responsibilities of the council and the decisions that the council will be weighing.

Question 4: Under the legislation, a State's concerns or interests could be overridden by the Regional OCS Council if the other States in the region disagree with that one State's position. What recourse would that one State have?

Answer 4: The state would still be able to seek federal consistency review, under the Coastal Zone Management Act (CZMA), of the permitting decisions made by the Office of Federal Energy and Minerals Leasing pursuant to the plans developed by the Regional OCS Councils. For example, states would continue to undertake independent consistency review of federal decisions involving OCS oil and gas lease sales, OCS exploration plans, and development and production plans. Regional OCS Councils could not override a state's CZMA decisions. NOAA also anticipates that state participation in the Regional OCS Councils' decisions will result in fewer state-specific CZMA-related conflicts and state CZMA objections.

Question 5: While there is an "opt-out" provision for a State to decline to participate in a Regional OCS Council, the Councils are still required to be created under the legislation, the Councils still are required to create a Strategic Plan, and the Federal government is still required to use the Strategic Plan's restrictions on areas to be leased and the timing for such leasing whether a State opts out of the process or not. For example, if the State of Alaska opts out of the Alaska Region OCS Council, the Council will still make binding decisions on the OCS off Alaska - decisions that were developed by a non-Federal entity which could be made up of a majority of special interest representatives. Can you comment on this?

Answer 5: As explained in answering question one above, while the Regional OCS Strategic Plans are binding on the Department of the Interior with respect to the OCS Program, it is unclear whether the Plans will be binding on other federal activities and, if they are binding, how an agency's decisions will be compelled to comply with the provisions of a Strategic Plan. It is also unclear what recourse, if any, would exist if a federal activity does not follow a Strategic Plan. Assuming that Strategic Plans would contain binding restrictions, however, and given the theoretical possibility of the scenario outlined above, a state that is potentially affected by the decisions of a Regional OCS Council would not likely opt out of membership in the Council. At any rate, whether a state has opted out or not, states would have CZMA federal consistency review as described in response to question 4.

Question 6: There appears to be a requirement for a census of living marine organisms and habitats but not energy resources or minerals. Shouldn't the Regional OCS Councils collect data on energy resources available to our country? Shouldn't decisions about whether to consider an area for any type of leasing be made with information about living marine resources and energy resources in the area?

Answer 6: Comprehensive planning should take into consideration the best available information on all human uses and natural resources, including energy resources. Many challenges exist to collecting the relevant and necessary information for an area. Appropriate and sufficient data will lead to beneficial outcomes in the long term, especially for emerging ocean uses, the impacts of which may not be ascertainable based on currently available information.

Question 7: H.R. 3534 requires the establishment of Regional Outer Continental Shelf Councils, it also recognizes the voluntary Regional Ocean Partnerships established by the States under CZMA authorities. While the Councils allow for any Regional Ocean Partnership to have representation on the Council, do you believe there will be overlap and duplication between these two entities? Would it be possible for the Regional OCS Councils to overrule actions taken by the Regional Ocean Partnerships?

Answer 7: To clarify the terms of the question, it is important to explain that the Coastal Zone Management Act (CZMA) does not currently authorize interstate compacts. The definition of "Regional Ocean Partnership" in Section 2(16) of H.R. 3534 includes initiatives "created by interstate compact—through authority granted to [states] by the Coastal Zone Management Act." The CZMA originally provided authority for such interstate compacts, but that authority was removed from the CZMA in 1990. The Committee has previously proposed restoring that authority, for example in the proposed Federal Lands and Resources Energy Development Act of 2009. The current definition of "Regional Ocean Partnership" is problematic in that it does not appear to address the need for statutory authorization of interstate compacts. Additionally, specific interstate compacts are authorized by federal legislation such as the Delaware River Basin Compact. If Section 2(16) is intended to include interstate compacts authorized by separate federal legislation, NOAA supports revising the definition accordingly.

Section 2(16) also defines "Regional Ocean Partnership" to include "voluntary, collaborative management initiatives developed and entered into by the Governors of two or more coastal States." Presumably, this may allude to entities such as the Northeast Regional Ocean Council, Mid-Atlantic Regional Council on the Ocean, Gulf of Mexico Alliance, and West Coast Governors Agreement on Ocean Health, which act in an advisory capacity but lack federal authorization to issue binding restrictions similar to an interstate compact.

Both the proposed Regional OCS Councils and Regional Ocean Partnerships (as defined) generally seek to use an ecosystem-based approach to address key issues facing coastal and marine areas. As a result, some overlap is likely. Section 602(c) provides that each Regional OCS Council "shall build upon and complement current State, multistate, and regional capacity and governance and institutional mechanisms to manage and protect ocean waters, coastal waters, and ocean resources." This language seems to suggest that there should be strong sensitivity to ensuring that Regional OCS Council actions do not override or conflict with actions taken by a Regional Ocean Partnership. However, to avoid potential jurisdictional conflicts we would like to work with the Committee to further define this relationship.

Question 8: Dr. Lubchenco, in remarks you made to the Regional Fishery Management Council Chairs on May 19, 2009, you said this about ecosystem-based management - "We talk a lot about managing on an ecosystem basis, but we really don't have the fundamental understanding of ecosystem-based science to really underpin those decisions. There is a huge amount that we don't know about oceans that is desperately needed to inform the kinds of management decisions, especially in light of the dual challenges posed by climate change and ocean acidification." H.R. 3534 would require ecosystem-based management. Has the ability of National Oceanic and Atmospheric Administration to grasp the underpinning science for this type of management changed since May of this year?

Answer 8: NOAA has already made substantive steps toward implementing ecosystem-based management. A primary goal for NOAA is to improve the agency's ecosystem-based management mechanisms to take stock of the range of human activities that can coexist with one another, to minimize conflicts and ensure ecosystems remain healthy. To that end, NOAA has developed, or is in the process of developing:

- Integrated Ecosystem Assessments - frameworks to assess ecosystem status and trends by integrating ecosystem observing, research, modeling, forecasting, and assessment efforts;
- A regional ecosystem data management system that makes related ecosystem data accessible; and the
- Comparative Analysis of Marine Ecosystem Organizations (CAMEO) Program—a research program geared toward understanding the complex dynamics controlling ecosystem structure, productivity, behavior, and resilience, with the overriding objective of supporting comprehensive ecosystem evaluations.

Much of the single-species information, such as stock assessments and habitat characterization that NOAA has developed, will be critical information underlying ecosystem-based management.

Ecosystem-based management uses current knowledge as a base and incorporates new information as it becomes available. As in all scientific endeavors, there will always be things that are unknown about marine ecosystems. In ecosystem-based management, NOAA uses its current understanding of the ecosystem to inform decisions. While NOAA does not yet have a complete understanding of ecosystem science, the agency can begin to implement this type of management with its current knowledge, which will grow over time. The challenge is to synthesize research and observation to elucidate the complex and geographically varied dynamics, relationships and processes that comprise an ecosystem.

Question 9: If the National Oceanic and Atmospheric Administration were to implement the ecosystem-based management provisions, how would the agency implement the impact assessment, which requires the agency to consider the cumulative impacts of the range of activities affecting an ecosystem? How would the agency weigh impacts of different types of activities, such as oil and gas, military exercises, fishing, or recreational boating?

Answer 9: Integrated Ecosystem Assessments (IEA) can support ecosystem-based approaches for the management of marine, coastal, and Great Lakes resources. IEAs will provide management strategy evaluation through a comprehensive system that manages and integrates diverse information about biological, physical, chemical, and geological interactions that occur within ecosystems. In addition, IEAs will incorporate economic and social science data to evaluate impacts to social sectors that could result from various management strategies. The likely consequence of alternative management scenarios can be compared using ecosystem models that simultaneously evaluate potential positive and negative impacts on the ecosystem, including the human dimension. This integrated information will supply resource managers with the best-available science to assess competing resource uses and allow them to implement effective ecosystem-based management to achieve multiple objectives.

Coastal and marine spatial planning and IEAs would provide the information to weigh impacts of different types of activities on coastal and marine systems. Both coastal and marine spatial planning and IEA processes would incorporate and develop information to assess the ecological, economic and social costs and benefits of alternative management strategies or uses in these ecosystems.

Question 10: The definition of Important Ecological Area states that it "means an area that contributes significantly to local or larger marine ecosystem health..." "Significantly" is a very subjective term, how would the agency define it?

Answer 10: NOAA would likely not attempt to establish a definition of "significantly" in the context of the statute without first seeking public input through a notice-and-comment rulemaking. Most likely, an ironclad definition of "significant" will not be possible because the significance of an area type may vary by ecosystem. Rather, it will probably be determined on a case-by-case basis, as is done in implementing the National Environmental Policy Act.

Question 11: Paragraph (A) of the definition of "Marine Ecosystem Health," requires "a complete diversity of native species and habitat wherein each native species is able to maintain an abundance, population structure, and distribution supporting its ecological and evolutionary functions, patterns and processes" to be present for a marine ecosystem to be considered healthy. Do you believe this language would require NOAA to deem a marine ecosystem unhealthy if there were an endangered or threatened species within it?

Answer 11: As explained in answering question two above, the presence of species listed as endangered or threatened with extinction under the Endangered Species Act of 1973 (ESA) within a marine ecosystem identified under this legislation would not require NOAA to deem the ecosystem unhealthy. Species are listed under the ESA not only due to the present or threatened destruction or modification to their habitat, but also based on commercial and scientific use, disease and predation, lack of adequate regulatory mechanisms, and other natural or human-caused factors. Any one of these factors may be sufficient to list a species, even though such species inhabit a healthy marine ecosystem that meets their biological needs. The ESA also requires NOAA to designate, with some exceptions, critical habitat for listed species. In these cases, critical habitat may be healthy and the designation allows for special management of the area to ensure conservation. Equally important, NOAA may designate and consider impacts to critical habitat that is a part of the species' historical range and essential to the conservation of the species, even if such habitat is not currently occupied by the species. The ESA has its own mechanisms for analyzing and managing threats to ESA-listed species and the ecosystems upon which they depend. Under this legislation, information on the habitat needs of ESA-listed species may be one consideration in the determination of marine ecosystem health, but would not be the sole basis for, or preclude, the agency from making a "healthy" determination.

Question 12: Paragraph (B) of the "Marine Ecosystem Health" definition states "a physical, chemical, geological, and microbial environment that is necessary to achieve such diversity". Does NOAA have the ability to make ecosystem assessments down to these levels? How accurate is the information available to decision makers?

Answer 12: NOAA collects large volumes of physical, chemical, geological and microbial data regarding marine ecosystems every day. However, data collection varies extensively by region and ecosystem. NOAA usually carries out assessments to address specific issues related to its legal mandates. The adequacy of information for addressing management issues is a function of the specific issue being addressed, the degree to which the issue is known in terms of basic scientific understanding, and the availability of the relevant data for assessing the management issue.

In some cases, NOAA has the ability to make detailed ecosystem assessments at very small scales, such as within Marine Protected Areas, National Marine Sanctuaries, Habitat Areas of Particular Concern, or habitat restoration sites. For example, NOAA provides accurate assessments of ecosystems at this level through programs that identify harmful algal blooms, track contaminants in shellfish, or characterize habitats and ecosystems in National Estuarine Research Reserves. These programs provide information to managers to protect human health or to conserve relatively small areas. However, there are issues for which the basic scientific understanding is inadequate, and many regions for which comprehensive data at this resolution are not available for every relevant variable.

Other data collected by NOAA, such as sea surface temperature from satellites, salinity and currents from buoys, and bathymetry from hydrographic surveys, cover broad areas (up to the ocean or basin scale). These data are available for large-scale assessments, but the degree to which the available data at these larger scales are adequate for decision makers also depends on the specific management issue. For example, it is possible to generate a regional map of fish habitat based on general

information on depth preferences and bathymetry. However, generating a comprehensive analysis and high-resolution forecast, such as how a massive oil spill or changes in climate or land use would affect ecosystem productivity, may not be feasible due to the lack of comprehensive data sets, as well as the lack of detailed scientific knowledge of the relevant ecosystem functions.

Mr. DEFAZIO. We will now proceed with the questions. I have both some on the subject matter before us and something that will be a bit off topic, but topical as relating to the biological opinion in the Pacific Northwest. Why don't I just start there?

My staff was involved in the briefing yesterday and I have seen a number of news stories and different people are basically characterizing the position of the Administration in different ways; in particular, as relates to any possible study of dam removal. And I just want to make certain we have this straight for the record.

I will quote to you one from the Oregonian and another story from the New York Times. And one, it says: We believe the actions in the plan will prevent further declines, but we have added these contingencies just in case.

You go on to say: Possible breaching of the Snake River dams remains on the table in this plan, but it is considered a contingency of last resort, and would only be implemented if the analysis concludes it would be appropriate and, in fact, beneficial.

And then you go on in the New York Times story to say, in speaking of the energy produced, say: They allow integration of wind into the grid. It is not clear what impact the removal would have on salmon. We believe the removal of them is not necessary in the short term. We want to give these other actions a chance to work.

Are those accurate representations of what you have said?

Dr. LUBCHENCO. Yes, they are.

Mr. DEFAZIO. OK. I guess my question is, and I am one who is a great skeptic of—and having waded through the last analysis which was done mostly by the Clinton Administration but not released until the next administration, the Bush Administration had taken office, on dam removal. They talked about myriad problems that would result in addition to cost, loss of power, with the sedimentation and the spread of sedimentation throughout the river system, the need to basically transport generations of salmon while the dams were being removed because of the increased sedimentation. And then they pointed to the fact that actually most of the prime spawning habitat was above the private dams, which don't have fish passage, unlike the Federal dams, and for whatever strange reason, none of the environmental groups has ever raised the issue regarding relicensure of those high private dams which provide no fish passage and which block the formerly prime spawning habitat. So, I am a skeptic.

But as I see it here, you have developed sort of a new series of short-term measures or sort of immediate or crisis measures that could be taken if there was a certain percentage drop in one or another of the runs, none of which go to dam-breaching. But what you are saying here is basically there would be a study of whether there should be a study of the dam-breaching, or that certainly is the way I would characterize it.

Could you just sort of, since there is a lot of controversy swirling around this, just sort of make it as clear as you can what is being proposed and how it relates to that?

Dr. LUBCHENCO. I would be happy to try, Congressman. We did file a report to the Court yesterday that was the result of a 5-month very intensive review of the 2008 biological opinion dealing with, as you know, the 13 listed species in the Columbia River Basin system. The report includes an adaptive management implementation plan which provides for significant enhancement of a series of actions to be taken to strengthen protection for these endangered and threatened species. We believe that those actions, which encompass habitat, hydro measures, control of invasive species, both predators and competitors of the salmon, and other types of measures will indeed be very strong. And if they play out the way we anticipate they do, they will be sufficient to provide for not jeopardizing those species and providing adequate potential for recovery.

We believe, though, that out of an abundance of caution, especially in light of climate change and other things which we might not anticipate, that it is critically important that we have the ability to monitor fish constantly and to have backup measures in place should they not be performing the way we expect them too.

Hence we have identified specific triggers and contingency actions that would go into place if the triggers were tripped. Those contingency actions are both rapid response actions, things that could be done immediately and that would bring immediate benefits to the fish, and some actions that would take longer to implement and would have benefit farther down the road.

Breaching of the dams is in this last category. We do consider it an option of last resort but have not taken it off the table completely. We do not think that it will be necessary, but we believe that it is important to have all options on the table in the eventuality that everything else fails.

So, what will be done immediately is twofold relative to dams. The Corps of Engineers would create essentially a blueprint for the studies that would be needed to be done should the triggers be tripped. And second, the NOAA Northwest Fishery Science Center would develop a new life-cycle analysis for the different species of salmon so that we are better able to identify which actions would benefit a particular species that is in trouble, as identified by the triggers.

So, because there are so many—it is a huge area, as you know—there are so many different species, it is impossible to know ahead of time exactly what actions would be appropriate for any one place and any one species. And so this analysis will help prepare us and give us the tools so that if a species is in trouble, we can more finely tune the actions needed to help it, not just start doing things that may or may not be useful. So, those two actions are done immediately, the blueprint and the life-cycle analysis.

Nothing else would be done until a trigger is tripped, in which case there would be immediate rapid response actions set in motion, as appropriate to the problem. And if the analysis across all habitats—I mean all of the H's, habitat, hydro, harvest and hatcheries—across all of those, suggests that dams would be beneficial,

a dam-breaching might be beneficial, then would be set in motion the studies that have a shelf life that need to look at the technical issues, the socioeconomic issues, the biological issue, the engineering issues. Those studies have been done in the past but are no longer current and they would need to be refreshed, if you will. So, that process would be set in motion.

Only if those analyses continue to say that everything else is failing, this population is in serious trouble, would there then be a decision to come to Congress and raise the possibility of breaching the dams.

So, as you can tell, that is a pretty lengthy process, and the bottom line is we believe that the actions, the strengthened and enhanced actions that are proposed in the plan, will be sufficient to uphold our responsibility under the Endangered Species Act for these fish. But we also want to have a precautionary approach, have checks and balances and things ready to go in case it doesn't work.

Mr. DEFAZIO. All right. Well, thank you. Thanks for that comprehensive response. I appreciate it. It is obviously very important to the region of the Nation and some other members of the Committee.

And I am not going to ask another question, but just one quick reflection. And I think the Chairman is going to follow up on the planning approach. But having been involved in terrestrial planning—that is, just zoning a county the size of the State of Connecticut—and having larger and angrier crowds than I had at my town hall meetings in doing that this summer, this sort of—I am going to urge you to look again at what the Committee is proposing and seeing whether, you know, we want to put all of the planning into one basket and try and move the entire thing forward—because I think it is going to be a gargantuan task—as opposed to perhaps rethinking where the Committee is at and discussing whether or not we could move ahead as we proposed and integrate it into your larger scheme, which I think will take quite some time. With that, I don't have a question.

Dr. LUBCHENCO. We would welcome the opportunity to have that discussion with you. I think there are some real opportunities there.

Mr. DEFAZIO. Thank you. I thank the Committee for its indulgence. And, Doc, you may be recognized right now.

Mr. HASTINGS. Thank you, Mr. Chairman. I wasn't sure I was going to bring up the issue of a buyout, but since my friend from Oregon brought it up, I think I will take advantage to revise and extend my questions on that.

Let me follow up, though, on what Mr. DeFazio mentioned. And briefly. With this action, do you think that the Obama Administration was legally required to put dam removal back on the agenda? And if it was not legally required, what specific reasons were there that dam-breaching was put back on the table?

Dr. LUBCHENCO. Congressman, it is my understanding that our legal obligations are to ensure that the species of salmon and steelheads, for which we have responsibility, are not jeopardized and have adequate potential for recovery.

Mr. HASTINGS. So, you are saying, then, that you believe that you are legally required then to do so; is that correct?

Dr. LUBCHENCO. I am saying that our responsibility is to ensure the survival and potential for recovery for the fish, and therefore we have created a package of actions that we believe will do that. But understanding that there are uncertainties in how these fish will respond to some of the actions, we want to have a series of backup contingencies at the ready in case the initial actions do not work as we think and hope they will.

Mr. HASTINGS. Well I don't want to get down—I just want to—this is to me kind of a yes or no question. I understand you want to save the species. I don't think there is anybody in the Northwest that wants to see these runs go extinct. But the previous administration in their proposal did not have dam-breaching on the table. You came in with dam-breaching. Do you think that you were doing that because you were legally required to do so? That is my—I mean it is a pretty straightforward question, I think.

Dr. LUBCHENCO. Congressman, we believe we need to have a fully stocked tool box to address this problem.

Mr. HASTINGS. From a legal standpoint?

Dr. LUBCHENCO. Yes.

Mr. HASTINGS. OK. Now, you mentioned in response to Mr. DeFazio in a quote you made, that dam-breaching would be the last resort. I think you were talking about different categories of triggers. You said last category, last resort. Yet in the press release that you sent out yesterday, you said: Starting immediately, the U.S. Corps of Engineers will prepare a study plan to develop scope, budget, and schedule of studies needed regarding potential breaching of the Lower Snake River dams.

Now, if it is the last resort, by your testimony, it seems to violate common sense to put last resort starting immediately. I would just like for you to explain that.

Dr. LUBCHENCO. Congressman, I think we were envisioning this as good responsible planning. The actions that would happen immediately would create, for example by the Corps, the blueprint for if the contingency is needed down the road, then we would know what would need to be done. It doesn't initiate any actions other than to create a blueprint.

Mr. HASTINGS. OK. But is it fair—well, I don't want to speculate. But I would suggest just because you are starting studies earlier, there may be somebody else, maybe not within the Administration, but somebody that has a very strong view on breaching the dams may have some court action. We can't control that, but that is a possibility, I assume.

Let me go on. As you know, there are only four of the ESA-listed runs that go by the Snake River dams. Why does the Obama Administration single out only these four dams as a contingency of last resort? Because if you are taking the approach that every option needs to be considered if the fish population is determined to be in a state of decline, is the Administration then opening the door to the potential removal of any dam within the Columbia River system?

Dr. LUBCHENCO. Mr. Congressman, those four are the ones that have been the subject of much discussion and are ones for which

these four are relevant to these four species, which have historically represented about 50 percent of the fish passing through that entire Columbia River Basin system. So, they are not insignificant runs.

Mr. HASTINGS. So, the decision is based simply because of the discussions on this and not anything other—I mean, the reason I ask that is because—and it is very significant—people within the Northwest say well, if those dams go, then others will go.

This strikes me as being a political decision rather than a scientific decision if you are only singling out those four dams with four runs. Because you answered my response that you felt that you were legally required to take this action in order to protect runs of fish. You answered in the affirmative on that.

Now, there are 13 runs of endangered fish within the Columbia River system. Thirteen runs come up: Bonneville, Vidals, John Day and McNeary. Now, if you are legally required to take this action and put dam-breaching on the table, even though you single out these four, with the intent of doing whatever you can to save species of runs, and the fact that there are 13 runs that come up the Columbia River before it gets to the Snake River, aren't you by default or de facto putting those dams in potential of breaching, because the idea—you feel you are legally required to save these salmon runs, fish runs I should say, not just exclusively salmon. So, am I way off base on that?

Dr. LUBCHENCO. Congressman, the analysis that we did suggested that the whole package of actions that we proposed are a comprehensive set.

Mr. HASTINGS. Right. But my question was specifically on dam-breaching and specifically your response that you were legally required to do this to save these runs, and what you just pointed out, that these are significant runs on the Snake River. But there are 13 runs on the lower Colombia on those dams that I am talking about, starting with Bonneville, starting with—and up to the John Day. I mean Vidals, John Day, and McNeary; 13 runs there. And if you are legally required, aren't you putting all of those potentially at risk of being breached?

Dr. LUBCHENCO. Congressman, we don't think that those actions will be needed. The rest of the package that we proposed. We believe should be sufficient to not jeopardize the species and provide adequate potential for recovery. So, we don't believe that——

Mr. HASTINGS. So, specifically, you are saying then—and if I may, and I thank you for your indulgence, Mr. Chairman—specifically, you are saying that there is no potential of putting the other dams on the Potential Breaching List.

Dr. LUBCHENCO. The only ones that were mentioned in our report were those four for the lower Snake River.

Mr. HASTINGS. OK. In view of your testimony I must say it sounds to me that the decision of putting the Snake River dams on the list or on potential breaching is more of a political decision and not a scientific decision, simply based on your testimony, if the intent—if the intent is to save runs of fish up within the Columbia River system. I can't draw any other conclusion from that, unfortunately, based on your testimony.

Now, if you have a different view of my conclusion, I would welcome you to write me and explain that in more depth, because as I hear the reasoning and the reason why the Obama Administration took this position, it is just hard to conclude, to me, that all the dams in the Snake River system would be potentially in jeopardy on this. And if you have a different view, I will more than welcome that correspondence.

So, thank you very much. Thanks, Mr. Chairman.

The CHAIRMAN. [Presiding.] The gentlelady from Guam, Ms. Bordallo, is recognized.

Ms. BORDALLO. Thank you very much, Mr. Chairman. And good afternoon, Dr. Lubchenco.

As you stated, Doctor, in your testimony, the uses of the ocean are increasingly exponentially. In particular, there is a growing interest in developing renewable energy projects offshore as well as increasing the amount of oil and gas development. Isn't comprehensive planning that takes into consideration all uses of the OCS when you are deciding where to site energy projects the best way to ensure these activities take place most efficiently and with the least environmental impact? And wouldn't a requirement to look comprehensively at offshore energy siting and development complement a larger marine spatial planning effort such as that which the Ocean Policy Task Force is looking at right now?

Dr. LUBCHENCO. Chairman Bordallo, thank you very much for raising that issue and providing me an opportunity to comment on it. We believe that the siting of energy use should ideally be done in a comprehensive fashion, exactly what you mentioned, in a way that takes into account the variety of other activities, the other uses of oceans that are in that area. And we would very much look forward to working with the Committee to make sure that the ways in which that is designed truly is comprehensive. It really does take into account the other uses, be it shipping, recreational, commercial fishing, aquaculture, tourism, the wide variety of other uses that may, in fact, interact with energy uses.

We believe that all of these activities should be considered in a comprehensive fashion, so that we really understand how each affects the other, what combination of activities can coexist without conflicts, where we can separate out areas that might be in conflict, where we can ensure that the combined activities do not adversely impact the health of the ocean on which many of those activities depend, so that there is good economic benefit but also environmental responsibility. So, our interest is not at all in stopping energy development.

We believe that that is critically important for the Nation and that the point is simply that that needs to be done in a larger context of the trade-offs, the other activities that coexist in that same area, or that might.

Ms. BORDALLO. Thank you, Doctor.

I have another question. Do you think it is surprising that revenues generated by OCS energy development currently fund a variety of programs, yet none of these programs benefit ocean and coastal resource conservation programs?

Dr. LUBCHENCO. Chairman, are you asking that—could you just rephrase that for me, please?

Ms. BORDALLO. All right. Do you think it is surprising that revenues generated by the OCS energy development currently fund a variety of programs, yet none of these programs benefit ocean and coastal resource conservation programs?

Dr. LUBCHENCO. Thank you, Chairwoman. I believe that the multiple uses and activities in the oceans are sufficiently important, that they need to have adequate funding to ensure that they are sustainable, that we are managing the programs in the ways that we need to, and that we are accomplishing the greater good for that full suite of programs.

It is certainly appropriate that revenues that are generated be used for the most comprehensive purposes, and from our perspective there are some extant and continuing needs for resources to address ocean uses specifically.

Ms. BORDALLO. Are you making that known?

Dr. LUBCHENCO. I would welcome an opportunity to work with you to do that.

Ms. BORDALLO. All right. I have a few more questions of follow-up. Do you think dedicating 10 percent of the OCS leasing revenues to the conservation, protection, maintenance, and restoration of our oceans, coasts and Great Lakes is an appropriate amount?

Dr. LUBCHENCO. As a general matter of policy, the Administration opposes the creation of new mandatory spending. Should Congress choose to move ahead with establishing a trust fund, we would like to see more revenues from offshore gas and oil leasing applied to ocean, coastal, and Great Lakes protection maintenance and use.

Ms. BORDALLO. And a quick follow-up, Doctor, on that question. How would better management and conservation of these resources benefit our economy?

Dr. LUBCHENCO. Our economy is strongly dependent on activities around the coastal margins of our Nation. That is most clearly seen in many coastal communities and coastal States. Certainly, from your perspective, Guam is very dependent on its marine and coastal resources. But so, too, are many other States around the United States.

Although I grew up in Colorado, my father was from South Carolina, and South Carolina has a very vibrant tourism industry that is dependent on the health and well-being of a variety of activities in and around the coastal region. The National Oceanic and Economics program gives us information that says that the leisure and hospitality industry of coastal counties in South Carolina contributed over $3 billion to the GDP of the State in 2007. So, that is just one sector of the economy of that State, and it clearly benefits significantly from having vibrant ocean and coastal healthy ecosystems that drive a lot of the economy. That is just a single State. Many other States depend on those revenues.

Fishing, both commercial and recreational fishing, shipping, are two other examples of activities that bring tremendous economic benefit to the Nation. And if we sum up the sum total of revenues generated by the coastal communities throughout the United States, it is over 60 percent of the GDP of the entire Nation. So, clearly, these coastal States and territories have very significant dependence on the health of ocean ecosystems.

Ms. BORDALLO. Well I guess, Doctor, in wrapping up I would agree with you that the coastal areas of these States are important. But always remember that in Guam and the other territories, we have a coastal area all around our territory, so we are very important, Mr. Chairman.

The CHAIRMAN. I would say to the gentlelady, yes, she does; and I was very honored and privileged to see it all during the last August district work period.

The gentleman from Virginia, Mr. Wittman.

Mr. WITTMAN. Thank you, Mr. Chairman. Dr. Lubchenco, welcome. Glad to have you here today with us.

I want to ask you about one particular section of H.R. 3534. It is in Title VII, section 704, as it relates to offshore aquaculture. In looking at that section, do you believe that that would in any way limit NOAA's ability to really look at creating a working framework for permitted offshore aquaculture? And in looking at that in the framework of Magnuson-Stevens, do you believe that it sort of takes away the directive from Magnuson-Stevens in where it directs to you manage fisheries in relationship to putting together a framework for offshore aquaculture?

Dr. LUBCHENCO. Congressman, we believe that there needs to be a strong national policy on aquaculture with clear authority, responsibility, mandates, et cetera. And we would very much welcome an opportunity to work with Congress to ensure that that happens.

Until we have such a policy, the existing authority under the Magnuson-Stevens Act is important to maintain, because there are existing policies in place, existing permits that are in place, and we would not want to be in a situation where there is a vacuum that is created.

So, I think the intent, certainly our intent, is to move toward a situation where we have a clearly defined policy that provides the kinds of checks and balances, enables us to grow our national ability to provide healthy, safe seafood in an environmentally responsible fashion, to provide good jobs, and to do so in a way that is cognizant of the other activities happening in an area. We would like to move ahead in doing that because of the growing importance of seafood to the Nation, our continued reliance on imports, the opportunities that we see for having environmentally sustainable and responsible aquaculture. And therefore the time has come to create a national ocean policy, a national aquaculture policy that clearly defines what the responsibilities are.

Mr. WITTMAN. As you know, right now there are a lot of cooperative efforts going on between the Regional Fisheries Management Councils, Congress, and the Administration to try to find ways that we can come to agreement on how aquaculture should be pursued within those areas.

Do you think the particular provisions here in H.R. 3534 might get in the way of that? Do you think it might be counter to that? Do you think it is complementary to that? I guess my concern is there seems to be, rather than parallel tracks here, there seems to be some divergence in what is going on cooperatively between the Councils, the Congress, and the Administration in what is portrayed in this bill, especially as it relates to the directions the coun-

cils have been given. And then going back to Magnuson-Stevens, with there being some counter to what Magnuson-Stevens proposes for us to do.

Dr. LUBCHENCO. I believe that the provisions that are in the bill would make it challenging for us to—for NOAA to be helpful in existing aquaculture operations at present. I think a much preferable approach is to develop a national aquaculture policy that clearly describes who is responsible, and for what and where, with permitting, with all the kinds of checks and balances that are appropriate to include in such legislation.

We currently don't have a clear description of who is in charge and under what authority. And that would greatly facilitate our being able to grow an industry in an environmentally responsible fashion without the ambiguities that currently exist.

Mr. WITTMAN. I appreciate that. I believe that to be exactly the case, that we need a national policy that sort of cuts through all of the—call them stovepipes, whatever you want to call them, but to make sure there is continuity in decision making. And as we know, right now there is either some ambiguity, or even conflicts, in how decision making should take place and who has authority to do what, when, and where.

So, I would agree. I think a national policy is the way to cut through that and to make sure everybody is clear as far as what their authority is and the direction they need to take.

If I can ask one more question. I am going to shift gears here a little bit. In looking at developing OCS spatial plans, I am wondering—we look at everything that is above the bottom. I am trying to look at all the different resources there. I am just wondering, do you believe that we should have information on sub-surface minerals and the data that is available there in this whole OCS spatial plan? And what part does that play in developing the entire plan?

Dr. LUBCHENCO. Congressman, having good information about the variety of resources on the seabed as well as on the water column, is incredibly valuable to helping understand what combination of activities can coexist and be sustained through time and ensure that the health of the system is protected. More information is absolutely useful.

Mr. WITTMAN. So, you think having that sub-surface mineral data would be critical in any kind of OCS spatial plan that you would look in putting forward?

Dr. LUBCHENCO. For that, as well as a lot of other types of information. We don't have all the information that we would like to have, including that. I don't believe that we need to wait for all of that to come in before we can begin to make decisions based on the information at hand; and so that we should proceed in two parallel tracks, acquiring that additional information that would enable us to make better decisions down the road, while at the same time utilizing the information that we do have at hand to make more comprehensive plans based on the variety of uses for which we have some data already.

Mr. WITTMAN. Thank you, Dr. Lubchenco. Thank you, Mr. Chairman.

The CHAIRMAN. Dr. Lubchenco, I had questions similar to the gentleman from Virginia, Mr. Wittman, in regard to agriculture,

but I will submit those in writing in the interest of time. I know you have a plane to catch and I want the other members to have an opportunity.

The gentleman from Indiana, Mr. Holt, is recognized.

Mr. HOLT. Thank you, Mr. Chairman. Thank you, Dr. Lubchenco, for your testimony. I often use you as an example of the President's wisdom in making appointments and his appreciation of science and his environmental sensitivity. In the interest of your time and the Committee's, your answers to my several questions can be in summary form and as brief as you care to make them.

How important is it, do you think, that you have a dedicated fund for dealing with ocean and coastal issues? Does ORCA fill the bill? Do we need something else?

Dr. LUBCHENCO. Mr. Congressman, let me say, first, just how much I appreciate the strong leadership that you have shown on behalf of science throughout the time that you have been in Congress. And I have appreciated that for a long time and continue to do so. I know that you believe not only in promoting science, but in using the best available science to make decisions, and I obviously agree with that very much.

The President I think has made clear that protecting and restoring ocean and coastal environments is a high priority of this administration. That is reflected in the Ocean Policy Task Force and in the reports that we will be providing to him for the first part of our activities that the task force is releasing tomorrow. The Administration recognizes the need to step up our efforts to protect oceans and coasts and to have the resources to do that.

As a general rule, the Administration opposes creating new mandatory programs or converting programs that have been funded through discretionary appropriations to mandatory funding. So, I think it would be in order for us to work closely with the Committee to try to define the ways in which the resources that are needed could be acquired in ways that would work for everyone.

Mr. HOLT. Thank you. In light of the task force report that we will be hearing about, does it have implications for the legislation that we are considering and moving forward with that legislation?

Dr. LUBCHENCO. The report that we will be releasing tomorrow is a draft report. It outlines a national ocean policy, a governance framework for achieving that, and an implementation plan that is pretty broad, big picture. That report is going to the President. It remains to be seen exactly what he will do with it. And the report will be available for public comment. It does lay out, as alluded to in the Presidential memo that set up the task force, the urgent need to have more comprehensive integrated spatial planning in oceans to get away from the sector-by-sector, issue-by-issue approach that has characterized the way we have managed oceans in the past and that has, indeed, created lots of gaps, and in sum has not been sufficient to ensure that we have healthy oceans and coasts or vibrant coastal communities that depend on those.

And so the task force will be making a series of recommendations that are designed to draw attention to the need to have more integration, more collaboration across various departments and agencies, and better structures for integrating across those different sec-

tors. So, yes it does, indeed, relate to the approach that is highlighted in this bill.

And I think that there is a wonderful opportunity for us to work together in figuring out how to move ahead with comprehensive energy legislation, because it is so important to the Nation, but to do so in a way that is cognizant of the breadth of other activities and the other important considerations that are also playing out in areas where energy might be appropriate to develop.

Mr. HOLT. Thank you.

I believe the legislation that the Chairman has before us here will be very consistent with what you are talking about. And since my time has expired, I will just finish with a comment following on the question I asked of the Secretary of the Interior.

I hope that your folks are moving forward as energetically as possible on studies of what we need to know about offshore wind potential. I think there are many studies to be done. I think we shouldn't wait for them to come up sequentially; we should be thinking now about what questions need to be addressed and vigorously pursuing answers to those questions.

The CHAIRMAN. The gentleman from Louisiana, Mr. Cassidy.

Sorry, didn't mean to wake you.

Mr. CASSIDY. I am trying to get my head around this. So, I am exploring this with you. I don't quite comprehend it.

It seems like in these regional planning councils, the very nature of who is placed on the council and their relative representation will tilt itself toward the result.

Do you follow what I am saying?

Dr. LUBCHENCO. I believe so.

Mr. CASSIDY. So, it almost seems—for example, Chairman Rahall's bill, on page 47 it says that the council that is set up would not allow leasing to occur unless the regional council had established it as being suitable for leasing.

And so I gather—I've gotten a memo on all of these things that you have to go through, and in my mass of papers—I've lost it, but there are four huge steps that you have to go through regulatory-wise in order to develop an offshore lease. It still seems you go through all of that and then be trumped by this regional council.

Is that a fair understanding of the bill as you understand it?

Dr. LUBCHENCO. I think it is.

Mr. CASSIDY. So, I have to ask, if we are going to make energy development a priority in our country, and we have, earlier, an Interior Department OIG report that speaks about much of the cost of developing oil and gas on Federal lands comes from the regulatory environment, which is more onerous on the Federal lands, and litigation which offers results from said regulations, it is like one more thick layer, a barrier to developing oil and gas leases offshore.

Would you disagree with that?

Dr. LUBCHENCO. What I am hearing is a plea for being able to develop energy resources as rapidly as possible.

Mr. CASSIDY. What I am very frustrated by is that I am from Louisiana. We have the Flower Gardens coral reef, which is one of the healthiest in the United States, in the midst of all of these drilling activity.

We had testimony from folks from Massachusetts who said that they were not going to do drilling because they wanted to protect their environment. Another fellow from the Chesapeake Bay, he would not allow drilling.

I am sitting there thinking, I am eating Maryland crab cakes with Louisiana crabs because they can't grow crabs in the Chesapeake Bay; and in Louisiana, where we drill, it seems we have a healthier coastline in terms of productivity.

It seems naíve to think we are going to be guided by science as much as we are going to be by the prejudice of the people on the Committee.

In your testimony you mentioned how we have inadequate information of the ecosystems of the ocean. So, we have inadequate information on the ecosystems, yet we are going to be making decisions regarding not developing, based on inadequate understanding but perhaps on prejudice regarding the ecosystem.

Does that follow? I mean disabuse me if I am wrong, but that really seems like where my thoughts are taking me.

Dr. LUBCHENCO. We never have as much information as we like. But we have an abundance of information that could be utilized to make good decisions about how to balance the variety of uses that exist in offshore areas, with the intent that allowing development of energy is appropriate, making sure that that is done in a way that does not negatively impact other types of very important activities—fisheries, for example, in Louisiana.

Mr. CASSIDY. If I am correct and empirically I am correct that the Flower Gardens coral reef coexists quite nicely with an area of intense drilling offshore, and if somebody came to you and said, We don't want it in our particular marine spatial area because we have coral reefs to protect, would you use the science to trump that argument to, say, take it off the table because we have empiric evidence that indeed you can coexist between the environment and drilling without a problem?

Dr. LUBCHENCO. I think the role of science in these decisions is to inform an understanding of the tradeoffs. The decisions about the tradeoffs are going to be made; those are societal decisions.

Mr. CASSIDY. But my question is, frankly I have found in this Committee we are guided often by prejudice as opposed to science. So, people say that it is harmful to the environment without empiric evidence based upon incidences from 20 years ago, and so therefore they proscribe things which, frankly, demonstrably would not hurt their environment.

So, I guess I am a little suspicious about this, which may be, if you will, stacked with folks hostile to energy development unless I know absolutely that we could take some of their prejudices off the table if we have compelling empiric evidence.

Do you see these MSPs as having the ability to do so?

Dr. LUBCHENCO. Marine Special Planning provides an opportunity to think about the tradeoffs across different types of activities in a way that you can design—you can identify those activities that can coexist without conflicts and the total of activities that can coexist without degrading the environment. It is simply a tool.

Mr. CASSIDY. I may not be making my point.

But clearly commercial fishing, recreational fishing, energy development and coral reef preservation is coexisting very nicely in the western Gulf and yet the arguments that I hear about bringing it to the eastern Gulf is that it would endanger recreational fishing and things such as coral structures.

So, granted, I will accept what you just said. It gives us a way to balance societal demands.

My question is, though, if I have a bunch of folks on there who, despite the evidence placed before them, are going to insist that they are not going to allow something based on what is effectively their prejudice, trumping MMS and four other agencies on the Federal level which have granted approval, that doesn't seem like a very good system to me.

Do you follow what I am saying? If all we are given is a place for people to vent their prejudices, how does that advance our cause?

Dr. LUBCHENCO. I think there are many examples of committees that are designed to bring different perspectives together and to, in the best of all cases, draw on scientific information to help inform those decisions, but where there may be legitimate differences of opinion. And that is part of the political process.

Mr. CASSIDY. Thank you.

The CHAIRMAN. The Chair would respond to the gentleman from Louisiana regarding the opening part of his question about the council's decisions on leasing.

Mr. CASSIDY. I should have asked that of you.

The CHAIRMAN. The Council would recommend to the Secretary up front, before the lease is issued, before the permit is issued and taking into account all of the information. These councils then make their recommendation up to the Secretary who has the ultimate decision on issuing release.

Mr. CASSIDY. Mr. Chairman, in all due respect, just because I don't understand this then, because on page 47, line 7, it says, "shall not include in any such leasing program any location unless identified and a strategic plan is suitable."

I took that to limit the Secretary's latitude of action, but is that not true? The Secretary could override the decision of the regional planning council?

The CHAIRMAN. That is correct. They are recommendations from the regional councils.

Mr. CASSIDY. So, "shall not include"—the "shall" is messing me up here because the "shall" seems like it is saying that the Secretary cannot lease that land, "shall not," so that is what I am asking.

The CHAIRMAN. It is my intent that the Secretary had the ultimate authority. If the "shall" or whatever in there to which did gentleman is referring is a problem, then we have to look at that, and we will look at that together.

I know the Director has to leave, and we appreciate your time with us today, and we do look forward to working with you as we continue to advance this legislation.

Dr. LUBCHENCO. Thank you so much. I appreciate your leadership on this very important issue; and the areas that we have flagged in the bill for which we have concerns, we would welcome

an opportunity to work with you. We agree with the overall goals and intent and think that we could have some very productive discussions.

So, thank you for the opportunity to testify.

The CHAIRMAN. I commend you for your leadership

We will now proceed to our third panel composed of the following individuals:

Ms. Mary L. Kendall, Acting Inspector General, U.S. Department of the Interior;

Mr. Frank Rusco, the Director of Natural Resources and Environment, U.S. Government Accountability Office.

We welcome the panel with us today. We appreciate the patience that you had during the course of the morning and early afternoon here.

The CHAIRMAN. And Ms. Kendall, we will call upon you first.

STATEMENT OF MARY L. KENDALL, ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Ms. KENDALL. Thank you, Mr. Chairman. Members of the Committee, thank you for the opportunity to testify today about the observations of the Office of Inspector General regarding Federal energy programs of the Department of the Interior, as well as our views on the CLEAR Act of 2009.

As you know, we have found weaknesses in the oversight of royalties, in the drafting of leases, in the onshore lease option process, in the underpayment of royalties, and in the ethical culture of the Royalty-In-Kind program.

Currently, we are reviewing BLM's onshore oil and gas lease inspection and enforcement program, how BLM coordinates with MMS on production data and royalty collection, royalty-free use of oil and gas during production, and oil volume verification in the Royalty-In-Kind program.

We are also examining alternative energy authorities, and practices in the Department.

Over the years, we have observed that MMS has been challenged in standing up new programs. Recently, both MMS and BLM have told us that they do not have guidance or policies for emerging energy programs, saying they do not know what they need until the programs go operational. To us this is a red flag cautioning the need for special attention and oversight.

Another concern is whether companies with geothermal leases are paying appropriate royalties. We are reviewing the propriety of geothermal regulations allowing deductions up to 99 percent of gross sales. We were curious to learn just how many companies are routinely reporting the 99 percent deductions, and we are surprised to discover that the necessary data is simply not collected to determine this amount.

Poor communications between BLM and MMS also threaten the loss of royalty revenues. BLM regulations and supplemental guidance require that all beneficial use deductions must meet certain regulatory criteria or receive prior approval by BLM. We found, however, that operators claim the deduction without meeting the established criteria or getting approval, thus underpaying Federal royalties.

But since the jurisdiction regarding beneficial use lies strictly with BLM, MMS cannot determine whether the deductions claimed in the operators' reports are valid.

Mr. Chairman, your draft legislation addresses many of the problems we have uncovered. For instance, the ethics penalties and restrictions on gifts, employment, and post-employment would affirmatively set expectations for employees involved with management and oversight of energy programs. The consolidation of the energy functions currently managed by both bureaus would help standardize inconsistent procedures between MMS and BLM that have complicated and hampered lease monitoring and royalty collections.

The bill would also transfer the MMS audit and compliance function to the Office of Inspector General. This proposal is best addressed by a discussion, albeit incomplete, of the pros and cons.

On the pro side, this would provide greater independence for the auditors, separating them from MMS policy and management processes. Better coordination between production and royalty auditors and the OIG investigators could also result in greater collections of underpaid royalties.

On the con side, the OIG would inherit the current programs associated with the royalty compliance program. The transfer would also shift the OIG toward a compliance audit model as opposed to our present focus on performance audits.

Finally, Mr. Chairman, I would like to discuss the effect that OIG efforts have had in the recovery of hundreds of millions of dollars for the taxpayer.

Between 1998 and 2007, the OIG jointly conducted royalty investigations with the Department of Justice, resulting in the recovery of nearly $700 million. When the Justice Department prosecutes these cases, 3 percent of recoveries go into a general fund that helps finance certain cases or future cases prosecuted by DOJ.

Investigative agencies, however, have no such funds, although we are absolutely critical to advancing cases to prosecution.

With a growing demand for all sources of energy in this country, there is arguably an even greater need to continue such investigations to secure recoveries. I would ask the Committee to consider a 1 percent fund for the investigative agencies, fashioned after the fund created for DOJ, to help finance future civil recovery cases.

I understand that this may not be in this Committee's jurisdiction, but we would be happy to work with this Committee and the relevant committee of jurisdiction toward this end.

This concludes my testimony. I respectfully request that my full written testimony be accepted into the record, and I would be happy to answer any questions.

The CHAIRMAN. Thank you. Without objection, all testimony will be made part of the record.

[The prepared statement of Ms. Kendall follows:]

Statement of Mary L. Kendall, Inspector General (Acting), U.S. Department of the Interior

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify today about the on-going work of the Office of Inspector General (OIG) regarding federal energy and mineral leasing programs within the Department of the Interior (DOI), and our perspectives on the proposals in the Consolidated Land, Energy and Aquatic Resources Act of 2009, H.R. 3534. My testimony this morning

will speak to myriad issues and challenges we have uncovered and continue to uncover in the Department's energy programs.

As you know, my office in recent years has conducted numerous investigations, audits and evaluations of oil and gas royalties programs. The OIG has amassed a vast independent body of knowledge in these programs. We discovered weaknesses in the oversight of royalties, in communications in the drafting of leases, in the onshore oral lease auction process, in the under-payment of royalties, and in the culture of the Royalty-In-Kind program where employees considered themselves exempt from the ethics rules that govern all federal employees.

Currently, we are reviewing the Department's onshore oil and gas lease inspection and enforcement program of the Bureau of Land Management (BLM), how BLM coordinates with the Minerals Management Service (MMS) on production data and royalty collection, royalty-free use of oil and gas during production, and oil volume verification in the MMS Royalty-In-Kind program.

We are also examining alternative energy generation authorities, regulations, and practices within the Department, to include MMS and BLM offshore and onshore programs in the areas of wind, wave and ocean current, and solar and geothermal. In the course of our work over the years, we have observed that MMS has been challenged when standing up new programs. For instance, we found no governing principles or written detailed policies for the RIK program or the Cape Wind Project. Recently, both MMS and BLM officials have told OIG personnel that they do not have written detailed policies for emerging energy programs since they do not know what they will need until they begin operating these programs. To us, this is a bright red flag cautioning the need for special attention and oversight.

One particular area warranting increased oversight is geothermal. Our overall concern is whether companies with geothermal leases are paying appropriate royalties. MMS has conducted nine audits of geothermal leases in the last eight years, collecting approximately $8.7 million additional royalties in the last five years alone. MMS compliance auditors raised concerns to the OIG that two companies were improperly or perhaps fraudulently claiming deductions to their royalty payments.

In one of those cases, we are also reviewing the propriety of regulations governing deductions up to 99 percent of gross sales. We were curious to learn if other companies are routinely reporting the 99 percent deductions. MMS, however, was unable to provide that information. It does not collect the necessary data from companies to determine the amount of deductions the companies take. In fact, MMS has little ability to determine the reasonableness of geothermal royalty payments it receives from a company unless it selects the company for an audit or compliance review, and seeks additional documentation that is not routinely submitted.

Poor communications between BLM and MMS also threaten the loss of royalty revenues to the Treasury. In the area of beneficial gas, BLM regulations and supplemental guidance inform operators that all deductions must meet regulatory requirements or receive prior approval by BLM. We found, however, that operators claim the deduction without meeting the established requirements or getting BLM's approval. Thus, operators underpaid federal royalties. But because the jurisdiction regarding beneficial use is strictly a BLM function, MMS cannot determine whether the deductions claimed in the operators' reports are valid.

Mr. Chairman, your draft legislation addresses many of the problems we have uncovered in our body of work. In Title I, for instance, the ethics penalties and restrictions on gifts, employment and post-employment would be constructive changes and would adequately address the behavioral anomalies we uncovered in the Royalty-In-Kind program, and would affirmatively set expectations for any other employees involved with oversight of energy production.

Also in Title I, the consolidation into one bureau of the leasing and royalty tracking and collection functions currently managed by MMS and BLM would address the weaknesses we found in terms of communications, royalty collection, data collection and sharing, differences in terminology, and separate data systems. This would help standardize procedures within the Department. Prior reports of both the OIG and the Government Accountability Office (GAO) have disclosed inconsistent procedures between MMS and BLM that have complicated and hampered lease monitoring and royalty collection.

Finally in Title I, the bill would transfer the MMS audit and compliance section to OIG. This proposal is best addressed by a discussion of the pros and cons, as the OIG is neutral on it.

On the pro side, there would be greater independence for auditors, taking audit responsibility out of the entity responsible for collecting royalties and put it into an independent entity responsible for conducting audits of the Department. It would separate auditors from the negotiation, policy and rulemaking processes. It would

separate the audit responsibility away from MMS management, which would eliminate allegations of management putting pressure on auditors to adjust findings.

Greater coordination between production and royalty auditors and the OIG investigative component could also result in greater collections and better oversight. We are seeing this with the interaction of two new units in our Central Region office in Lakewood, Colorado. There, the Energy Investigations Unit (EIU) and the Royalty Initiatives Group (RIG) work closely together to share information and leverage available resources to improve oversight. This cross-discipline collaboration is relatively unique within the IG community, but it is extraordinarily effective.

Finally on the pro side, would be the opportunity to improve the federal government's relationship with STRAC—the State and Tribal Royalty Audit Committee. STRAC has had a rather contentious relationship with MMS over the years, often questioning the accuracy of royalty payments. As the OIG is independent of MMS management, the OIG would begin with a clean slate in dealing with STRAC. And the oversight of STRAC audits would be consistent with OIG oversight of other external audits.

On the con side, OIG would inherit the current problems associated with the royalty compliance program. These problems include: the Compliance Information Management system; a lack of reliable performance data; a lack of reliable data on payors and audit results; a dependence on MMS's current payor system, or the need to build a new one; and the backlog of audits for previous years.

In addition to these issues, the OIG would have a substantial learning curve to overcome. Whether or not MMS personnel would be transferred, OIG does not currently have sufficient expertise. The mechanics of doubling the size of our office with additional auditors and support personnel would be challenging. Questions to be answered include: were to place new personnel; how to organize the function; would it cause a slowdown in other OIG work; how significant an effort would the hiring process be; could royalty audits end up dwarfing the other OIG functions?

The transfer would also move the OIG more towards the compliance audit mode, as opposed to performance audits. That would present difficult organizational structure issues, and would require finding a balance between the primary mission of OIG to the Department, which is to provide independent oversight to ensure and improve the integrity of its programs and operations, versus the mission of validating royalty payments. The transition would take at least 18 months and would be costly. It would require developing new procedures, hiring and training employees, getting equipment up and running, dealing with possible staff morale issues, and relocation issues.

Finally on the con side are the challenges with OIG taking over the management of contracts and cooperative agreements related to the STRAC, and the dynamics of conducting oversight of 18 separate audit entities.

Mr. Chairman, we have identified other provisions in the bill that would be useful for effective oversight. I will mention just a few. OIG supports the doubling of fines and penalties contained in Title II. Prior OIG and GAO reports have discussed the need to increase fines and penalties. The bill also would allow for sharing civil penalty proceeds with states and Indian tribes. This would help create an incentive for the states and tribes to be extra diligent in their royalty audits.

In Title III, OIG supports the development of more specific expectations concerning diligent development of oil and gas leases. Recent OIG and GAO reports on non-producing leases mentioned that existing law is vague. Increasing non-producing lease annual rental rates might help encourage lease holders to develop the leases.

In Title V, OIG supports getting fair market value for revenues from solar and wind projects. We also support authorizing audits of wind and solar leases, although this would require additional audit capacity. Finally, in Title VII, OIG supports the repeal of certain incentives and royalty relief for drilling because new technology has reduced drilling costs in those areas. It would also establish and index an annual fee of $4.00 per acre for non-producing leases. We do not take a position on this proposal. Rather, we point to the report we issued earlier this year on non-producing leases, we discuss the time periods involved in producing on oil and gas leases. For example, time periods increase for the deeper Outer Continental Shelf (OCS) leases due to the time required to establish transportation systems. Imposing fees on non-producing leases may have the unintended negative impact of reducing industry interest in federal leases.

Finally, Mr. Chairman, I would like to discuss the issue of deterrence against fraud in the payments of royalties, and the recovery of hundreds of millions of dollars for the taxpayer. Between 1998 and 2007, the OIG jointly conducted royalty management investigations with the U.S. Department of Justice (DOJ). They resulted in the recovery of nearly $700 million from 25 U.S. companies operating oil,

natural gas, coal, and other activities on federal and Indian lands. These were difficult and often complex civil cases, many of which were qui tam cases. With a growing demand for all sources of energy in this country, there is an even greater need to continue such investigations and secure recoveries.

Unfortunately, Mr. Chairman, the OIG must carefully balance working those cases against other compelling investigative demands. When the Justice Department works those cases, three percent of recoveries go into a general fund that helps finance future cases prosecuted by DOJ. Investigative agencies however have no such fund, although we are absolutely critical to advancing such cases to prosecution.

I would ask the Committee to consider a one percent fund, fashioned after the fund created for DOJ, to help finance future civil recovery cases. I understand that this may not be in this Committee's jurisdiction, but we would be happy to work with this Committee and the relevant committee of jurisdiction toward that end.

This concludes my testimony. I respectfully request that my full written testimony be incorporated into the record.

Once again, Mr. Chairman, I appreciate the invitation to share my views with you. I would be happy to answer any questions.

Response to questions submitted for the record by Mary Kendall, Inspector General (Acting), U.S. Department of the Interior

Questions from the Majority:

1. **Ms. Kendall, based on a review that your office recently issued on the BLM leasing process, do you have an opinion on how well that process is run compared to other leasing processes, such as the one MMS operates offshore? What recommendations would you suggest for how the BLM leasing process could be improved legislatively?**

OIG Response: Our review of BLM's leasing process included assessing other state and Federal programs to identify promising auction practices and bidding methods. We identified several processes that BLM should consider, including the sealed bid method currently used by MMS' Offshore Energy and Minerals Management for offshore leasing. We also found limitations, however, to certain methods and recommended that BLM conduct an analysis to determine the best bidding method.

One of our report recommendations was for BLM to work with Congress to amend the Mineral Leasing Act of 1920 to eliminate the oral auction requirement and allow alternative auction processes. For example, BLM recently piloted an internet leasing auction method which we believe is a promising practice. The CLEAR Act language requiring a competitive sealed bid method may limit BLM from implementing the internet auction method or any other alternative methods.

2. **Ms. Kendall, a report your office put out earlier this year relating to production from oil and gas leases, states, "the existing process is heavily reliant upon companies doing the right thing." Could you elaborate a bit on what you meant by that? Where are the greatest deficiencies in the program? What can the Administration do to correct these deficiencies, and what actions would require Congressional action?**

OIG Response: Our work on nonproducing leases found inaccuracies in BLM's lease tracking database and a lack of coordination between MMS and BLM concerning leases that enter the production phase. Timely notification by BLM when a lease begins producing would alert MMS to prepare for the leaseholder's royalty reports and payments. Otherwise, missed royalty payments can result. As explained in our report, neither BLM nor MMS adequately tracked the status of the federal lease universe. For example, in a small sample of leases held by one company, BLM was unaware that production had previously commenced on four of five leases. In effect, without proper government oversight, companies are left to police themselves to ensure their own compliance with reporting regulations. We believe the bureaus should be more proactive in their oversight.

In our view, the greatest deficiencies in the program are gaps that potentially result in lost royalty payments. This includes the matter discussed in our report in which a breakdown in communications between BLM and MMS could have cost the federal government nearly $6 million in royalties. Both bureaus could be more vigilant in tracking the activity of companies on federal leases. Other deficiencies include the lack of reliable data on lease status and the absence of a clear policy regarding production expectations for federal leases. Our report contained recommendations to correct these problems.

The Administration can help by ensuring BLM and MMS work together to solve coordination issues. This would include the identified miscommunications in reporting first production as well as the multiple lease database systems that do not share information and have data integrity problems. Regarding Congressional action, as I stated in my testimony, the proposal in Title I of the CLEAR Act to consolidate the leasing and royalty tracking and collection functions currently managed by MMS and BLM into one bureau should address the weaknesses we found in terms of communications, royalty collection, data collection and sharing, differences in terminology, and separate data systems.

Questions from the Minority:

1. **In a DOI IG report Oil and Gas Production on Federal Leases: No Simple Answers released in February 2009, your office found that "...mandating production on all federal leases or increasing lease fees would not necessarily enhance production, and could, in fact, reduce industry interest in federal leases." Yet the CLEAR Act would do just that. Are you concerned that, rather than increasing the diligent development of natural gas and oil, this Act would have the effect of making it more difficult to operate on public lands and therefore development would be even slower?**

OIG Response: Our report cautioned that government actions designed to increase or mandate production need to be carefully considered. There is no guarantee that a lease contains oil and gas in commercially recoverable quantities. Both bureau and industry officials advised us that mandates or increased monetary fees may not have the intended effect of increasing production and may actually do the opposite. This could be the case especially where nearby state, fee, or Native American lands basically compete with federal properties. In formulating the complex business decisions to obtain leases, energy companies may choose to acquire leases that have less restrictive conditions.

2. **Your office's report found that DOI does not track oil and gas leases until a company applies for an Application for Permit to Drill (APD) (page 3). This means that all background work—environmental analysis, exploratory work, bureaucratic obstacles, and clearing legal challenges—does not have any visibility, and only very late in the process is a lease considered having "diligent development". Wouldn't a better approach to diligent development first be to track and understand all the activities being pursued on a lease before punitive measures are directed at oil and gas companies?**

OIG Response: We concluded in our report that BLM and MMS can do more to track the status of nonproducing leases. As the responsible land managers, the bureaus would likely benefit from knowing the current phase of development for individual properties. This more proactive approach toward lease management should yield an improved understanding of the properties, thus allowing more informative decision-making.

We also determined that the Department did not have a clear policy regarding production from federal leases. Specifically, guidelines are needed to direct the bureaus on production monitoring such as tracking lease development activities and the locations and pace that development should occur. We recommended that the Department consult with Congress to establish this policy.

3. **BLM spent about $90 million in FY2008 to administer the onshore natural gas and oil program in 2008. From that investment, the federal government gained $4.2 billion in royalties, rents, and bonuses. For every dollar invested, the oil and gas program returned $46. Why is it necessary to increase fees on industry at this time, especially in a bad economy and with natural gas prices below the cost to produce the gas?**

OIG Response: We did not suggest, in either report or testimony, that increased fees are necessary.

4. **Your office's report found serious data integrity issues in the management of the oil and gas program, finding that "...leases that are identified as producing by BLM may be reported as non-producing by MMS." (page 4) What would be your recommendation for fixing these data problems? How can DOI impose so-called "production incentive fees" when it doesn't have credible data to reliably track producing and non-producing leases? Does it make sense to penalize oil and gas companies with additional fees, when many of the reasons for delays to leasing re-**

sult from government delay and legal challenges from environmental groups?

OIG Response: In our report, we addressed the data integrity issue by first recommending that BLM improve the reliability of lease status information in its lease data system (LR2000) and also recommending BLM and MMS work together to establish a single lease management system as opposed to the separate systems now in use, thus eliminating the need for manual reporting between the two bureaus. In short, we believe the bureaus should concentrate on ensuring the accuracy of lease data so that any decisions, about fees or otherwise, can be based on reliable information.

5. Your office's report pointed out that, according to the Colorado School of Mines, "...faster production rates do not necessarily equate to more production. That is, simply drilling multiple wells on every lease may not result in more produced volumes of oil and gas—A company looking to produce the greatest volumes will take a longer term outlook and drill fewer wells." (page 11) Yet the proposed "production incentive fee" penalizes lessees who are performing environmental analysis and conducting exploratory work to determine the best way to develop resources and whether it is even worthwhile to develop the leases. Rather than developing intelligently where it makes sense to do so, this disincentive fee could encourage faster but less efficacious drilling. Are you concerned about that potential perverse incentive?

OIG Response: We have expressed concern that a government directive to drill could have the adverse effect of drilling unnecessary wells and reducing the overall production volume of oil and gas. As explained in our report, the decision to drill should be based on technical reservoir-based considerations as opposed to the desire to quickly move a lease into production status. The end goal should be to maximize oil and gas production volumes, not merely to drill wells. This goal can be achieved utilizing "smart" production methods, in which a well is drilled only when necessary.

6. The rigorous deadlines for royalty payments require companies to estimate payments before all information is available on production, making overpayments and underpayments inevitable. Companies currently receive a lower interest rate for overpayments than they pay for underpayments, and as such overpayment interest is not a favorable financial instrument exploited by industry at the expense of the government. The CLEAR Act would leave in place interest requirements for overpayment, yet remove the interest paid for underpayments. This seems inequitable to me. Why do you think this is necessary? Do you think that companies are "gaming" the system by knowingly making overpayments?

OIG Response: We noted that the third sentence in the question inadvertently reversed the provision in the CLEAR Act regarding interest assessments. The Act actually eliminates interest on royalty overpayments but continues interest on underpayments. In our opinion, the interest rate itself is not the issue. Rather, lessees have the obligation to accurately report their royalties to MMS, thus interest penalties serve a useful purpose as an incentive to report correctly the first time. By allowing interest to accrue on an overpayment, the lessee is actually rewarded for submitting an inaccurate report. Accordingly, the elimination of interest on overpayments may help encourage more accurate reporting. We are not aware of any instances in which companies have exploited the system by intentionally making royalty overpayments, nor have we conducted any work to determine whether this is a practice.

The CHAIRMAN. Mr. Rusco.

STATEMENT OF FRANK RUSCO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. RUSCO. Thank you, Mr. Chairman, members of the Committee. I am pleased to be here today to discuss the Department of the Interior's management of Federal oil and gas resources and the proposed Consolidated Land Energy and Aquatic Resources Act of 2009.

Effective management and oversight of our Nation's oil and gas resources and the royalties paid on their production is increasingly critical as our country faces both serious fiscal challenges and long-term projected growth in energy demands.

My testimony today is based on a body of work GAO has done over the past 5 years in which we have found numerous shortcomings in the Department of the Interior's management of public oil and gas.

We have made many recommendations to Interior to improve policies and practices, and for the most part, the Agency has been responsive in trying to improve. I also want to echo the Secretary's earlier comments that the vast majority of Interior's employees and management are good public servants doing their best to implement responsible resource management. Nonetheless, in reviewing this body of work in its entirety, it is clear that more comprehensive reform is required to achieve reasonable assurances that the Nation's oil and gas resources are being managed effectively, efficiently, and that the public is receiving an appropriate share of revenues generated from these resources.

In the rest of my statement I will use some specific examples to draw attention to a few important areas in which we believe further improvements must be made.

In a series of reports and testimonies on Interior's Royalty-In-Kind program, we have found that the Agency has likely overstated the net benefits of the program by overestimating increased revenues and by ignoring costs that should be attributed specifically to the program.

In addition, over the past 10 years, during which time the RIK program grew from a pilot to represent almost half of the revenues collected by the Minerals Management Service, the MMS has maintained that one of the key benefits of the RIK program is that audits of royalty payers were not necessary because MMS was collecting oil and gas directly and marketing it themselves rather than relying on companies to report the revenue derived from the sale of that oil and gas.

However, in our most recent report on the RIK program, we found that audits among gas companies are a routine industry practice and that because MMS does not audit royalty payers, it cannot provide reasonable assurance that it is even receiving the government's entitled royalty share of gas.

A recurring theme we encountered in our work on oil and gas has inconsistencies in the way in which oil and gas leases are managed onshore and offshore. For example, Offshore Energy and Minerals Management appears to be more proactive in identifying which tracts to lease at what time and in evaluating bids to ensure they are getting fair market value for these leases.

In contrast, for offshore leases, BLM appears to be more passive, relying on industry to nominate which tracts to offer for lease and not having a bid evaluation process at all.

Second, offshore there are differing lease length terms of 5, 8, and 10 years based on water depth, which would encourage faster development in areas that are closer to shore or closer to existing pipeline and production infrastructure, while allowing greater time to develop deeper or further out tracts.

In contrast, BLM issues only 10-year leases regardless whether the lease is in a known production area or one that is more speculative in nature.

Similarly, our ongoing work on production verification identified that Offshore Energy and Minerals Management and BLM have each developed different policies and practices for verifying oil and gas production, seemingly creating a duplication of efforts.

In this ongoing work, we have also found cases in which data are not reliably and completely shared between the BLM and MMS to facilitate both production verification and royalty oversight functions.

In our report on section 390 categorical exclusions that is being issued today, we found that a lack of centralized oversight and guidance contributed to these categorical exclusions being unevenly and inconsistently applied across different BLM field offices.

For example, in some cases in applying section 390 categorical exclusions, BLM thwarted the NEPA process by approving drilling permits using section 390 categorical exclusions even though the applications did not meet the criteria set out in the Energy Policy Act of 2005.

BLM has issued general guidance on how and when to use section 390 categorical exclusions; however, BLM headquarters lacks an oversight program, does not know how field offices, are using these categorical exclusions, and has yet to develop a template they say is needed to maximize consistency and compliance with agency guidance with its many field offices.

Mr. Chairman, these brief examples are only a few of the many troubling policies and practices that we have found characterized management of Federal oil and gas resources.

I and my assistant director, Jeff Malcolm, will be happy to answer any questions you or the Committee may have about our work or how it relates to some of the provisions set forth in the proposed legislation being made today.

[The prepared statement of Mr. Rusco follows:]

Statement of Frank Rusco, Director, Natural Resources and Environment, U.S. Government Accountability Office

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to participate in this hearing to discuss the Department of the Interior's management of federal oil and gas leases and the proposed Consolidated Land, Energy, and Aquatic Resources Act of 2009. Effective management and oversight of our nation's oil and gas resources, and the royalties paid on their production, is increasingly critical as our country faces both serious fiscal challenges and long-term projected growth in energy demand.

Interior plays an important role in managing federal oil and gas resources. In Fiscal Year 2008, Interior reported that private companies extracted approximately 467 million barrels of oil and 4.7 trillion cubic feet of natural gas from federal lands and waters. This production provided significant revenue to the federal government. Specifically, Interior collected more than $22 billion in royalties for oil and gas produced from federal lands and waters, purchase bids for new oil and gas leases, and annual rents on existing leases, making revenues from federal oil and gas one of the largest nontax sources of federal government funds. Within Interior, the Bureau of Land Management (BLM) manages onshore federal oil and gas leases and the Minerals Management Service's (MMS) Offshore Energy and Minerals Management (OEMM) manages offshore leases. MMS is responsible for collecting royalties for both onshore and offshore leases.

In recent years, GAO and others, including Interior's Inspector General have conducted numerous evaluations of federal oil and gas management and revenue collection processes and practices and have found many material weaknesses in this man-

agement. These weaknesses place an unknown but significant proportion of royalties and other oil and gas revenues at risk and raise questions about whether the federal government is collecting an appropriate amount of revenue for the rights to explore for, develop, and produce oil and gas from federal lands and waters.

In this context, my testimony today addresses (1) Interior's policies and practices for oil and gas leasing, (2) Interior's oversight of oil and gas production, (3) the existing royalty fiscal regime and Interior's policies to encourage oil and gas development, (4) inefficiencies within Interior's oil and gas information technology (IT) systems, and (5) the ongoing challenges with Interior's Royalty-in-Kind (RIK) program. Across several of these areas, our past work has led us to make a number of recommendations to the Secretary of the Interior. Officials at Interior have reported that they are working to implement many of these recommendations. This statement is primarily based on our extensive body of work on Interior's oil and gas leasing and royalty collection programs, including one report being issued today,[1] as well as some preliminary ongoing work on Interior's procedures for ensuring oil and gas produced from federal leases is properly accounted for. This body of work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during these reviews provides a reasonable basis for our findings and conclusions based on our audit objectives.

Interior's Policies for Offshore and Onshore Oil and Gas Leases Differ in Key Ways

In October 2008, we reported that Interior's policies for identifying and evaluating lease parcels and bids differ in key ways depending on whether the lease is located offshore—and therefore overseen by OEMM—or onshore—and therefore overseen by BLM.[2] These differences follow:

Identifying lease parcels. OEMM's and BLM's methods for identifying areas to lease vary significantly, specifically:

- For offshore leases, OEMM—as prescribed by the Outer Continental Lands Act—lays out 5-year strategic plans for the areas it plans to lease and establishes a schedule for offering leases. OEMM offers leases for competitive bidding, and all eligible companies may submit written sealed bids, referred to as bonus bids, for the rights to explore, develop, and produce oil and gas resources on these leases, including drilling test wells.
- For onshore leases, BLM—which must follow the Federal Onshore Oil and Gas Leasing Reform Act of 1987—is not required to develop a long-term leasing plan and instead relies on the industry and the public to nominate areas for leasing. BLM selects lands to lease from these nominations, as well as some parcels it has identified on its own. In some cases, BLM, like MMS, offers leases through a competitive bidding process, but with bonus bids received in an oral auction rather than in a sealed written form.

Evaluating bids. OEMM and BLM differ in their regulations and policies for evaluating whether the bids received for areas offered for lease are sufficient.

- For offshore leases, OEMM compares sealed bids with its own independent assessment of the value of the potential oil and gas in each lease. After the bids are received, OEMM—using a team of geologists, geophysicists, and petroleum engineers assisted by a software program—conducts a technical assessment of the potential oil and gas resources associated with the lease and other factors to develop an estimate of their fair market value. This estimate becomes the minimally acceptable bid and is used to evaluate the bids received. The bidder that submits the highest bonus bid that meets or exceeds MMS's estimate of the fair market value of a lease is awarded the lease. These rights last for a set period of time, referred to as the primary term of the lease, which may be 5, 8, or 10 years, depending on the water depth. If no bids equal or exceed the minimally acceptable bid, the lease is not awarded but is offered at a subsequent sale. According to OEMM, since 1995, the practice of rejecting bids that fall below the minimally acceptable bid and re-offering these leases at a later sale has resulted in an overall increase in bonus receipts of $373 million between 1997 and 2006.

---

[1] GAO, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act, GAO-09-872 (Washington, D.C.: Sept. 16, 2009).

[2] GAO, Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development, GAO-09-74 (Washington, D.C.: Oct. 3, 2008).

- For onshore leases, BLM relies exclusively on competitors, participating in an oral auction, to determine the lease's market value. Furthermore, BLM, unlike OEMM, does not currently employ a multidisciplinary team with the appropriate range of skills or appropriate software to develop estimates of the oil and gas reserves for each lease parcel, and thus, establish a market and resource-based minimum acceptable bid. Instead, BLM has established a uniform national minimum acceptable bid of at least $2 per acre and has taken the position that as long as at least one bid meets this $2 per acre threshold, the lease will be awarded to the highest bidder. Importantly, onshore leases that do not receive any bids in the initial offer are available noncompetitively the day after the lease sale and remain available for leasing for a period of 2 years after the competitive lease sale. Any of these available leases may be acquired on a first-come, first-served basis subject to payment of an administrative fee. Prior to 1992, BLM offered primary terms of 5 years for competitively sold leases and 10 years for leases issued noncompetitively. Since 1992, BLM has been required by law to only offer leases with 10-year primary terms whether leases are sold competitively or issued noncompetitively.

Interior's Oversight of Federal Oil and Gas Production Has Not Kept Pace with Increased Activity

Oil and gas activity has generally increased over the past 20 years, and our reviews have found that Interior has—at times—been unable to meet its oversight obligations for (1) completing environmental inspections, (2) verifying oil and gas production, (3) performing environmental monitoring in accordance with land use plans, and (4) using categorical exclusions to streamline environmental analyses required for certain oil and gas activities. Specifically:

- *Completing environmental inspections.* In June 2005, we reported that with the increase in oil and gas activity, BLM had not consistently been able to complete its required environmental inspections—the primary mechanism to ensure that companies are complying with various environmental laws and lease stipulations. At the time of our review, BLM officials explained that because staff were spending increasing amounts of time processing drilling permits, they had less time to conduct environmental inspections.[3]
- *Verifying oil and gas production.* In September 2008, we reported that neither BLM nor OEMM was meeting its statutory obligations or agency targets for inspecting certain leases and metering equipment used to measure oil and gas production, raising uncertainty about the accuracy of oil and gas measurement. For onshore leases, BLM had completed only a portion of its production verification inspections—with some BLM offices completing all of their required inspections and others completing portions as small as one quarter of their required inspections—because its workload has substantially grown in response to increases in onshore drilling. For offshore leases, OEMM had completed about half of its required production inspections in 2007 because of ongoing cleanup work related to Hurricanes Katrina and Rita.[4] Additionally, in our ongoing work, we have found that Interior has not consistently updated its oil and gas measurement regulations. Specifically, OEMM has routinely reviewed and updated its measurement regulations, whereas BLM has not. Accordingly, OEMM has updated its measurement regulations six times since 1998, whereas BLM has not updated its measurement regulations since 1989.
- *Performing environmental monitoring.* In June 2005, we reported that four of the eight BLM field offices we visited had not developed any resource monitoring plans to help track management decisions and determine if desired outcomes had been achieved, including those related to mitigating the environmental impacts of oil and gas development. We concluded that without these plans, land managers may be unable to determine the effectiveness of various mitigation measures attached to drilling permits and decide whether these measures need to be modified, strengthened, or eliminated. Officials offered several reasons for not having these plans, including that staff that could have been used to develop such plans had been busy with processing an increased number of drilling permits, as well as budget constraints.[5]

---

[3] GAO, Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities, GAO-05-418 (Washington, D.C.: June 17, 2005).

[4] GAO, Mineral Revenues: Data Management Problems and Reliance on Self-Reported Data for Compliance Efforts Put MMS Royalty Collections at Risk, GAO-08-893R (Washington, D.C.: Sept. 12, 2008).

[5] GAO-05-418.

- *Using categorical exclusions.* Our report issued today on BLM's use of categorical exclusions [6]—authorized under section 390 of the Energy Policy Act of 2005 to streamline the environmental analysis required under the National Environmental Policy Act (NEPA) when approving certain oil and gas activities—identifies some benefits but raises numerous questions about how and when BLM should use these categorical exclusions. First, our analysis found that BLM used section 390 categorical exclusions to approve over one-quarter of its applications for drilling permits from Fiscal Years 2006 to 2008. While these categorical exclusions generally increased the efficiency of operations, some BLM field offices, such as those with recent environmental analyses already completed, were able to benefit more than others. Second, we found that BLM's use of section 390 categorical exclusions was frequently out of compliance with both the law and agency guidance and that a lack of clear guidance and oversight by BLM were contributing factors. We found several types of violations of the law, such as BLM offices approving more than one oil or gas well under a single decision document and drilling a new well after statutory time frames had lapsed. We also found examples, in 85 percent of field offices reviewed, where officials did not comply with agency guidance, most often by failing to adequately justify the use of a categorical exclusion. While many of these violations and noncompliance were technical in nature, others were more significant and may have thwarted NEPA's twin aims of ensuring that BLM and the public are fully informed of environmental consequences of BLM's actions. Third, we found that a lack of clarity in both section 390 of the act and BLM's guidance has raised serious concerns. Specifically:

(1) Fundamental questions about what section 390 categorical exclusions are and how they should be used have led to concerns that BLM may be using these categorical exclusions in too many—or too few—instances; for example, there is disagreement as to whether BLM must screen section 390 categorical exclusions for circumstances that would preclude their use or whether their use is mandatory;

(2) Concerns about key concepts underlying the law's description of these categorical exclusions have arisen—specifically, whether section 390 categorical exclusions allow BLM to exceed development levels, such as number of wells to be drilled, analyzed in supporting NEPA documents without conducting further analysis; and

(3) Vague or nonexistent definitions of key criteria in the law and BLM guidance have led to varied interpretations among field offices and concerns about misuse and a lack of transparency.

In light of our findings from this report, we recommended that BLM take steps to improve the implementation of section 390 of the act by clarifying agency guidance, standardizing decision documentation, and ensuring compliance through more oversight. [7] We also suggested that Congress may wish to consider amending the Energy Policy Act of 2005 to clarify and resolve some of the key issues identified in our report.

Interior May be Missing Opportunities to Fundamentally Shift the Terms of Federal Oil and Gas Leases to Increase Revenues

In our past work, we have identified several areas where Interior may be missing opportunities to increase revenue by fundamentally shifting the terms of federal oil and gas leases. As we reported in September 2008, (1) federal oil and gas leasing terms result in the U.S. government receiving one of the smallest shares of oil and gas revenue when compared to other countries and (2) Interior's royalty rate, which does not change to reflect changing prices and market conditions, led to pressure on Interior and Congress to periodically change royalty rates. [8] We also reported that Interior was doing far less than some states to encourage development of leases. [9] Specifically:

- The U.S. government receives one of the lowest shares of revenue for oil and gas resources compared with other countries and resource owners. For example, we reported the results of a private study in 2007 showing that the revenue share the U.S. government collects on oil and gas produced in the Gulf of Mexico ranked 93rd lowest of the 104 revenue collection regimes around the world covered by the study. Further, the study showed that some countries had in-

[6] GAO-09-872.
[7] GAO-09-872.
[8] GAO, Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment, GAO-08-691 (Washington, D.C.: Sept. 3, 2008).
[9] GAO-09-74.

creased their shares of revenues as oil and gas prices rose and, as a result, could collect between an estimated $118 billion and $400 billion, depending on future oil and gas prices. However, despite significant changes in the oil and gas industry over the past several decades, we found that Interior had not systematically re-examined how the U.S. government is compensated for extraction of oil and gas for over 25 years.

- Since 1980, in part due to Interior's inflexible royalty rate structure, Congress and Interior have been pressured—with varying success—to periodically adjust royalty rates to respond to current market conditions. For example, in 1980, a time when oil prices were high compared to today's prices, in inflation-adjusted terms, Congress passed a windfall profit tax, which it later repealed in 1988 after oil prices had fallen significantly from their 1980 level. Later, in November 1995—during a period with relatively low oil and gas prices—the federal government enacted the Outer Continental Shelf Deep Water Royalty Relief Act (DWRRA) which provided for "royalty relief," the suspension of royalties on certain volumes of initial production, for certain leases in the Gulf of Mexico in depths greater than 200 meters during the 5 years after passage of the act—1996 through 2000. For leases issued during these 5 years, litigation established that MMS lacked the authority under the act to impose thresholds.[10] As a result, companies are now receiving royalty relief even though prices are much higher than at the time the DWRRA was enacted. In June 2008, we estimated that future foregone royalties from all the DWRRA leases issued from 1996 through 2000 could range widely—from a low of about $21 billion to a high of $53 billion. Finally, in 2007, the Secretary of the Interior twice increased the royalty rate for future Gulf of Mexico leases. In January, the rate for deep water leases was raised to 16.66 percent. Later, in October, the rate for all future leases in the Gulf, including those issued in 2008, was raised to 18.75 percent. Interior estimated these actions would increase federal oil and gas revenues by $8.8 billion over the next 30 years. The January 2007 increase applied only to deep water Gulf of Mexico leases; the October 2007 increase applied to all water depths in the Gulf of Mexico.

We concluded that these royalty rate increases appeared to be a response by Interior to the high prices of oil and gas that have led to record industry profits and raised questions about whether the existing federal oil and gas fiscal system gives the public an appropriate share of revenues from oil and gas produced on federal lands and waters. Further, the royalty rate increases did not address industry profits from existing leases. Existing leases, with lower royalty rates, would likely remain highly profitable as long as they produced oil and gas or until oil and gas prices fell significantly. In addition, in choosing to increase royalty rates, Interior did not evaluate the entire oil and gas fiscal system to determine whether or not these increases were sufficient to balance investment attractiveness and appropriate returns to the federal government for oil and gas resources. On the other hand, according to Interior, it did consider factors such as industry costs for outer continental shelf exploration and development, tax rates, rental rates, and expected bonus bids. Further, because the increased royalty rates are not flexible with respect to oil and gas prices, Interior and Congress could again be under pressure from industry or the public to further change the royalty rates if and when oil and gas prices either fall or rise. Finally, these past royalty changes only affected Gulf of Mexico leases and did not address onshore leases.

- Interior's OEMM and BLM varied in the extent to which they encouraged development of federal leases, and both agencies did less than some states and private landowners to encourage lease development. As a result, we concluded that Interior may be missing opportunities to increase domestic oil and gas production and revenues. Specifically, in the Gulf of Mexico, OEMM varied the lease length in accordance with the depth of water over which the lease is situated. For example, leases issued in shallow water depths typically have lease terms of 5 years, whereas leases in the deepest areas of the Gulf of Mexico have 10 year primary terms; shallower water tends to be nearer to shore and to be adjacent to already developed areas with pipeline infrastructure in place, while deeper water tends to be further out, have less available infrastructure to link up with, and generally present greater challenges associated with the depth of the wells themselves. In contrast, BLM issues leases with 10 year primary terms, regardless of whether the lease happens to lie adjacent to a fully developed field with the necessary pipeline infrastructure to carry the product to

[10] The Department of Justice filed a Petition for Writ of Certiorari with the Supreme Court on July 13, 2009 challenging the Fifth Circuit ruling in Kerr-McGee Oil & Gas Corp. v. U.S. Department of the Interior, 554 F.3d 1082 (5th Cir. 2009).

market, or whether it is in a remote location with no surrounding infrastructure. Furthermore, BLM also uses 10 year primary terms in the National Petroleum Reserve-Alaska, where it is significantly more difficult to develop oil fields because of factors including the harsh environment. We also examined selected states and private landowners that lease land for oil and gas development and found that some did more than Interior to encourage lease development. For example, to provide a greater financial incentive to develop leased land, the state of Texas allowed lessees to pay a 20 percent royalty rate for the life of the lease if production occurred in the first 2 years of the lease, as compared to 25 percent if production occurred after the fourth year. In addition, we found that some states and private landowners also did more to structure leases to reflect the likelihood of finding oil and gas. For example, New Mexico issued shorter leases and could require lessees to pay higher royalties for properties in or near known producing areas and allowed longer leases and lower royalty rates in areas believed to be more speculative. Officials from one private landowners' association told us that they too were using shorter lease terms, ranging from as little as 6 months to 3 years, to ensure that lessees were diligent in developing any potential oil and gas resources on their land. Louisiana and Texas also issued 3-year onshore leases. While the existence of lease terms that appear to encourage faster development of some oil and gas leases suggest a potential for the federal government to also do more in this regard, it is important to note that it can take several years to complete the required environmental analyses needed for lessees to receive approval to begin drilling on federal lands.

To address what we believed were key weaknesses in this program, while acknowledging potential differences between federal, state, and private leases, we recommended that the Secretary of the Interior develop a strategy to evaluate options to encourage faster development of oil and gas leases on federal lands, including determining whether methods to differentiate between leases according to the likelihood of finding economic quantities of oil or gas and whether some of the other methods states use could effectively be employed, either across all federal leases or in a targeted fashion. In so doing, we recommended that Interior identify any statutory or other obstacles to using such methods and report the findings to Congress.[11]We also noted that Congress may wish to consider directing the Secretary of the Interior to

- convene an independent panel to perform a comprehensive review of the federal oil and gas fiscal system,[12] and
- direct MMS and other relevant agencies within Interior to establish procedures for periodically collecting data and information and conducting analyses to determine how the federal government take and the attractiveness for oil and gas investors in each federal oil and gas region compare to those of other resource owners and report this information to Congress.[13]

Interior's Oil and Gas IT Systems Lack Key Functionalities

Our past work and preliminary findings have identified shortcomings in Interior's IT systems for managing oil and gas royalty and production information. In September 2008, we reported that Interior's oil and gas IT systems did not include several key functionalities, including (1) limiting a company's ability to make adjustments to self-reported data after an audit had occurred and (2) identifying missing royalty reports.[14] Since September 2008, MMS has made improvements in identifying missing royalty reports, but it is too early to assess their effectiveness, and we remain concerned with the following issues:

- MMS's ability to maintain the accuracy of production and royalty data has been hampered because companies can make adjustments to their previously entered data without prior MMS approval. Companies may legally make changes to both royalty and production data in MMS's royalty IT system for up to 6 years after the initial reporting month, and these changes may necessitate changes in the royalty payment. However, MMS's royalty IT system currently allows companies to make adjustments to their data beyond the allowed 6-year time frame. As a result of the companies' ability to make these retroactive changes, within or outside of the 6-year time frame, the production data and required royalty payments can change over time—even after MMS completes an audit—complicating efforts by agency officials to reconcile production data and ensure that the proper royalties were paid.

[11] GAO-08-691.
[12] GAO-08-691.
[13] GAO-09-74.
[14] GAO-08-893R.

- MMS's royalty IT system is also unable to automatically detect instances when a royalty payor fails to submit the required royalty report in a timely manner. As a result, cases in which a company stops filing royalty reports and stops paying royalties may not be detected until more than 2 years after the initial reporting date, when MMS's royalty IT system completes a reconciliation of volumes reported on the production reports with the volumes on their associated royalty reports. Therefore, it remains possible under MMS's current strategy that the royalty IT system may not identify instances in which a payor stops reporting until several years after the report is due. This creates an unnecessary risk that MMS may not be collecting accurate royalties in a timely manner.

Additionally, in July 2009, we reported that MMS's IT system lacked sufficient controls to ensure that royalty payment data were accurate.[15] While many of the royalty data we examined from Fiscal Years 2006 and 2007 were reasonable, we found significant instances where data were missing or appeared erroneous. For example, we examined gas leases in the Gulf of Mexico and found that, about 5.5 percent of the time, lease operators reported production, but royalty payors did not submit the corresponding royalty reports, potentially resulting in $117 million in uncollected royalties. We also found that a small percentage of royalty payors reported negative royalty values, which cannot happen, potentially costing $41 million in uncollected royalties. In addition, royalty payors claimed gas processing allowances 2.3 percent of the time for unprocessed gas, potentially resulting in $2 million in uncollected royalties. Furthermore, we found significant instances where royalty payor-provided data on royalties paid and the volume and or the value of the oil and gas produced appeared erroneous because they were outside the expected ranges.

Moreover, in preliminary findings on Interior's procedures for ensuring oil and gas produced from federal leases is properly accounted, we found that:

- The IT systems employed by both BLM and MMS fail to communicate effectively with one another resulting in cumbersome data transfers and data errors. For example, in order to complete the weekly transfer of oil and gas production data between MMS and BLM, MMS staff must copy all production data onto a disk, which then must be sent to BLM's building where it is subsequently uploaded into BLM's IT system. Furthermore, according to BLM staff, the production uploads are currently not working as intended. Frequently, an operator may make adjustments to production records, which results in the creation of a new record. When these new records are uploaded into BLM's IT system, they should replace—or overlay—the prior record. However, due to technical problems, new reports are not correctly overlaying the previously uploaded production reports; instead they are creating duplicate or triplicate production reports for the same operator and month. According to BLM's IT system coordinator, this will likely complicate BLM's production accountability work.
- BLM's efforts to use gas production data acquired remotely from gas wells through its Remote Data Acquisition for Well Production program to facilitate production inspections have shown few results after 5 years of funding and at least $1.5 million spent. Currently, BLM is only receiving production data from approximately 50 wells via this program, and it has yet to use the data to complete a production inspection, making it difficult to assess its utility.

To address weaknesses we identified in our September 2008 report,[16] we recommended that the Secretary of the Interior, among other things

- finalize the adjustment line monitoring specifications for modifying its royalty IT system and fully implement the IT system so that MMS can monitor adjustments made outside the 6-year time frame, and ensure that any adjustments made to production and royalty data after compliance work has been completed are reviewed by appropriate staff, and
- develop processes and procedures by which MMS can automatically identify when an expected royalty report has not been filed in a timely manner and contact the company to ensure it is complying with both applicable laws and agency policies.

In addition, to address weaknesses identified in our July 2009 report,[17] we made a number of recommendations to MMS intended to improve the quality of royalty data by improving its IT systems' edit checks, among other things.

---

[15] GAO, Mineral Revenues: MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties, GAO-09-549 (Washington, D.C.: July 15, 2009).

[16] GAO-08-893R.

[17] GAO-09-549.

Interior's RIK Program Continues to Face Challenges

Interior's management and oversight of its RIK program has raised concerns as to whether Interior is receiving the correct royalty volumes of oil and gas. Both we and Interior's Inspector General have issued reports detailing deficiencies in both program management and management ethics, including (1) problems with reporting the benefits of the RIK program to Congress, (2) Interior's failure to use available third-party data to confirm gas production volumes, (3) inappropriate relationships between RIK staff and industry representatives, and (4) insufficient controls for monitoring natural gas imbalances, among others. Specifically:

- In September, 2008, we reported that MMS's annual reports to Congress did not fully describe the performance of the RIK program and, in some instances, may have overstated the benefits of the program. For example, MMS's calculation that from Fiscal Years 2004 to 2006, MMS sold royalty oil and gas for $74 million more than it would have received in cash was based on assumptions, not actual sales data, about the prices at which royalty payors would have sold their oil or gas had they sold it on the open market. MMS did not report to Congress that even small changes in these assumptions could result in very different estimates. Also, MMS's calculation that the RIK program cost about $8 million less to administer than the royalty-in-value program over the same period did not include certain costs, such as IT costs shared with the royalty-in-value program that would likely have changed the results of MMS's administrative cost analysis. In addition, MMS's annual reports to Congress lacked important information on the financial results of individual oil sales that Congress could use to more broadly assess the performance of the RIK program. [18]
- In 2008, we also reported that MMS's oversight of its natural gas production volumes was less robust than its oversight of oil production volumes. As a result,

MMS did not have the same level of assurance that it is collecting the gas royalties it is owed. For instance, for oil, MMS compared companies' self-reported oil production data with third-party pipeline meter data from OEMM's liquid verification system, which records oil volumes flowing through pipeline metering points. Using these third-party pipeline statements to verify production volumes reported by companies would have provided a check against companies' self-reported statement of royalty payments owed to the federal government. While analogous data were available from OEMM's gas verification system, MMS did not use these third-party data to verify the company-reported production numbers. [19] As of February 2009, MMS had begun to use the gas verification system.

- Interior's Inspector General also issued a report in September 2008 which found that the program had suffered from ethical shortcomings. In particular, the Inspector General found that a program manager had been paid for consulting by an oil and gas company in violation of agency rules and that up to one-third of all RIK staff had inappropriately socialized and received gifts from oil and gas companies. [20]

Most recently, in August 2009, we found that MMS risks losing millions of dollars in revenue from the RIK natural gas program due to inadequate oversight. [21] Specifically:

- MMS lacks the necessary information to quantify revenues resulting from imbalances—instances when MMS receives a percentage of total production other than its entitled royalty percentage. MMS does not know the exact amount it is owed as a result of natural gas imbalances because it lacks at least three types of information. First, it does not verify all gas production data to ensure it receives its entitled percentage of RIK gas. Second, MMS lacks information on how to price gas imbalances and when interest will begin accruing on imbalances for leases that have terminated from the program or those leases where production has ceased. Finally, MMS could be forgoing revenue because it lacks information on daily gas imbalances.
- MMS also may be forgoing revenue because it does not audit operator data to ensure it has received its entitled royalty percentage. Although MMS has procedures for reconciling imbalances and uses OEMM's gas verification system data

[18] GAO, Oil and Gas Royalties: MMS's Oversight of Its Royalty-in-Kind Program Can Be Improved through Additional Use of Production Verification Data and Enhanced Reporting of Financial Benefits and Costs, GAO-08-942R (Washington, D.C.: Sept. 26, 2008).

[19] GAO-08-942R.

[20] Department of the Interior, Inspector General Investigative Report, August 7, 2008.

[21] Royalty-in-Kind Program: MMS Does Not Provide Reasonable Assurance It Receives Its Share of Gas, Resulting in Millions in Forgone Revenue, GAO-09-744 (Washington, D.C.: Aug. 14, 2009).

where available, we found that it has not assessed the risk of forgoing audits at those measurement points where it does not have complete data with which to verify that it has been allocated its entitled percentage of gas. Although the RIK guidance letter to operators states MMS's right to audit operator information related to RIK gas produced and delivered, MMS has not done so because it has considered its verification of operator-generated data to be sufficient. MMS has also claimed that it has saved money as a result of not auditing and that this is a benefit of the RIK program. However, other royalty owners and members of the oil and gas industry regularly audit operator-reported data to ensure that they have received the gas they are entitled to.

To address weaknesses we identified in our September 2008 and August 2009 reports,[22] we recommended that the Director of MMS, among other things,

- improve calculations of the benefits and costs of the RIK program and the information presented to Congress by (1) calculating and presenting a range of the possible performances of the RIK sales in accordance with Office of Management and Budget guidelines; (2) reevaluating the process by which it calculates the early payment savings; (3) disclosing the costs to acquire, develop, operate, and maintain RIK-specific IT systems; and (4) disaggregating the oil sales data to show the variation in the performances of individual sales.
- improve MMS's oversight of the RIK gas program and help ensure that the nation receives its fair share of RIK gas by (1) establishing policies and procedures to ensure outstanding imbalances are valued appropriately and that the correct amount of interest is charged; (2) monitoring daily gas imbalances and determining whether legislative changes are needed to require operators to deliver the royalty percentage on a daily basis; (3) auditing the operators and imbalance data; (4) promulgating RIK program regulations; and (5) establishing procedures, with reasonable deadlines, for resolving and collecting all RIK gas imbalances in a timely manner.

In conclusion, over the past several years, we and others have examined oil and gas leasing at the Department of the Interior many times and determined such leasing to be in need of fundamental reform across a wide range of Interior's functions. As Congress considers what fundamental changes are needed in how Interior structures its oversight of oil and gas leasing, we believe that our and other's past work provides a road map for successful reform of the agency's oversight functions. If steps are not taken to effectively manage these challenges, we remain concerned about the agency's ability to manage the nation's oil and gas and provide reasonable assurance that the U.S. government is collecting an appropriate amount of revenue for the extraction and use of these scarce resources.Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions that you or other Members of the Committee may have at this time.

GAO Contact and Staff Acknowledgements

For further information on this statement, please contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. Other staff that made key contributions to this testimony include Ron Belak, Ben Bolitzer, Melinda Cordero, Nancy Crothers, Heather Dowey, Glenn C. Fischer, Cindy Gilbert, Richard Johnson, Mike Krafve, Jon Ludwigson, Jeff Malcolm, Alison O'Neill, Justin Reed, Holly Sasso, Dawn Shorey, Karla Springer, Barbara Timmerman, Maria Vargas, Tama Weinberg, and Mary Welch.[NOTE: The GAO reports submitted for the record have been retained in the Committee's official files. The reports can be found at the web addresses listed below:] Government Accountability Office (GAO) Report entitled "Energy Policy Act of 2005. Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act." September 2009, GAO-09-872 http://www.gao.gov/new.items/d09872.pdf Government Accountability Office (GAO) Report entitled "Mineral Revenues. MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties." July 2009, GAO-09-549.http://www.gao.gov/new.items/d09549.pdf Government Accountability Office (GAO) Report entitled "Royalty-In-Kind Program. MMS Does Not Provide Reasonable Assurance It Receives Its Share of Gas, Resulting in Millions in Forgone Revenue." August 2009, GAO-09-744 http://www.gao.gov/new.items/d09744.pdf

[22] GAO-08-942R and GAO-09-744.

GAO
Accountability Integrity Reliability

Highlights

Highlights of GAO-09-1014T, a testimony before the Committee on Natural Resources, House of Representatives

September 16, 2009

FEDERAL OIL AND GAS MANAGEMENT

Opportunities Exist to Improve Oversight

Why GAO Did This Study

In fiscal year 2008, the Department of the Interior collected over $22 billion in royalties and other fees related to oil and gas. Within Interior, the Bureau of Land Management (BLM) manages onshore federal oil and gas leases, and the Minerals Management Service's (MMS) Offshore Energy and Minerals Management (OEMM) manages offshore leases. A federal lease gives the lessee rights to explore for and develop the lease's oil and gas resources. MMS is responsible for collecting royalties for oil and gas produced from both onshore and offshore leases.

GAO has reviewed federal oil and gas management and revenue collection and found many material weaknesses. This testimony is based primarily on key findings from past GAO reports and some preliminary findings from ongoing work. These findings focus on Interior's: (1) policies for oil and gas leasing, (2) oversight of oil and gas production, (3) royalty regime and policies to boost oil and gas development, (4) oil and gas information technology (IT) systems, and (5) royalty-in-kind program. GAO's past reports provided recommendations that Interior officials report that they are working to implement.

View GAO-09-1014T or key components. For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov.

What GAO Found

GAO's numerous evaluations of federal oil and gas management have identified five key areas where Interior could provide greater oversight:

- Interior's policies for leasing offshore and onshore oil and gas differed in key ways. Specifically, MMS sets out a 5-year strategic plan identifying both a leasing schedule and the areas it would lease. In contrast, BLM relies on industry and others to nominate areas for leasing, then selected lands to lease from these nominations, as well as areas it had identified. Additionally, MMS independently assessed the value of the lease and reserves the right to reject low bids, whereas BLM relied exclusively on the results of its bid auctions to determine the lease's market value.

- Oil and gas activity has generally increased in recent years, and Interior has, at times, been unable to meet its legal and agency mandated oversight obligations for (1) completing required environmental inspections, (2) verifying oil and gas production, (3) using categorical exclusions to streamline environmental analyses required for certain oil and gas activities, and (4) performing environmental monitoring in accordance with land use plans.

- Interior may be missing opportunities to fundamentally shift the terms of federal oil and gas leases and increase revenues. Compared to other countries, the United States receives one of the lowest shares of revenue for oil and gas. In addition, Interior's royalty rate, which does not change to reflect changing prices and market conditions, has at times, led to pressure on Interior and Congress to periodically change royalty rates in response to market conditions. Interior also has done less than some states and private landowners to encourage lease development and may be missing opportunities to increase production and, subsequently, revenues.

- Interior's oil and gas IT systems lack key functionalities. GAO's past work found that MMS's ability to maintain the accuracy of oil and gas production and royalty data was hampered by two key limitations in its IT system (1) it did not limit companies' ability to adjust self-reported data after MMS had audited them, and (2) it did not identify missing royalty reports. Preliminary GAO findings have also identified technical problems within BLM's IT systems and their compatibility with MMS's IT systems.

- Interior's royalty-in-kind program, in which oil and gas producers submit royalties in oil and gas rather than cash, continues to face challenges. GAO found problems with MMS's analysis of program benefits that were reported to Congress, and that MMS failed to use third party data to verify companies' self-reported data. Meanwhile, Interior's Inspector General identified major ethical lapses, including inappropriate relationships between MMS royalty-in-kind program officials and industry representatives.

Response to questions submitted for the record by Frank Rusco, Director, Natural Resources and Environment, U.S. Government Accountability Office

Questions from the Majority:

1. Mr. Rusco, during the hearing the Inspector General was questioned about the alleged "simplicity" of the Royalty-In-Kind (RIK) program, and whether or not the Minerals Management Service (MMS) would need to hire additional auditors upon the elimination of RIK. The implication appeared to be that the RIK program was simpler for producers and the government, and did not require auditing, as MMS has stated in prior years. Has your work touched on this issue at all, and have you been able to draw any conclusions regarding the issue of RIK and auditing?

As we pointed out in our statement, MMS may be forgoing revenue from the RIK program because it does not audit operator data to ensure it has received its entitled royalty percentage. Although MMS has procedures for reconciling imbalances—differences between the RIK gas MMS is owed and the percentage it actually receives—and verifies some available data, we found that MMS does not audit and has not assessed the risk of forgoing audits at those measurement points where it does not have complete data with which to verify that it has been allocated its entitled percentage of gas. In contrast, other royalty owners and members of the oil and gas industry regularly audit operator-reported data to ensure that they have received their entitled percentages of oil and gas. In our August 2009 report, we recommended that MMS audit the operators and gas imbalance data of a sample of leases taken in-kind and, on the basis of the audit findings, establish a risk-based auditing program for RIK properties. [1]

Looking more broadly at our work examining Interior's oversight of royalty collections, we have noted that Interior has relied on company-reported data and reduced its use of auditing overall, and that these practices place at risk Interior's ability to ensure that the federal government is receiving the royalties it is entitled to. We have not evaluated whether the termination of the RIK program would necessitate an increase in auditing staff, specifically. However, our work has emphasized the key role that we believe auditing can provide in the oversight of minerals management. We have, for example, found that audits—which include a review of third-party source documents that contain information on prices, volumes and deductions—are an important control for ensuring accurate royalty payments. As such, an increased role of auditing may increase staffing costs, but could also increase revenues. As the RIK program winds down, some staff involved in that program may have valuable knowledge, skills, and abilities that could aid in the auditing of traditional leases or otherwise assist in oversight of the program.

2. Mr. Rusco, as part of your investigations, have you or other GAO investigators visited BLM field offices? Please provide a report on those visits, including a report on the quality and competence, generally, of the various oil and gas management programs. Are BLM field offices complying with environmental laws and regulations? And if not, do you believe this is a function of requiring BLM to do more than is possible given the resources it has? Or, you would ascribe any deficiencies to other causes, and if so, what would be the greatest concerns you have in this regard?

Regarding field offices, over the past several years, GAO has completed numerous investigations involving activities at BLM related to royalties and oil and gas leasing and development. As part of those investigations, GAO staff have been to 13 BLM field offices, as listed in table 1, which comprise about half of the field offices with oil and gas operations. We have been to some of these offices more than once.

[1] GAO, Royalty-In-Kind Program: MMS Does Not Provide Reasonable Assurance It Receives Its Share of Gas, Resulting in Millions in Foregone Revenue, GAO-09-744 (Washington, D.C.: Aug. 14, 2009).

Table 1: BLM Field Offices Visited by GAO Audit Teams

State	BLM Field Office
Alaska	Anchorage
Colorado	Glenwood Springs
	Grand Junction
	White River
Montana	Miles City
New Mexico	Carlsbad
	Farmington
Utah	Price / Moab
	Vernal
Wyoming	Buffalo
	Casper
	Pinedale
	Rawlins

Overall, we have found these site visits and interviews with key staff in those locations to be instrumental to our efforts to identify ways to improve oversight of royalty collections and mineral leasing and development within Interior. Over the course of our work in these field offices, the staffing levels, experience, expertise, and overall level of performance across these offices have varied widely at given points in time and over time. As such, we cannot provide a report on the quality and competence of the oil and gas programs in these offices. We have examined some of these issues as part of our production verification work and expect to release a report in a few months about our findings that may provide insights about staffing and experience.

Regarding compliance with environmental laws and regulations, in previous reports, we have identified instances where BLM staff have not complied with laws and regulations and noted what we believed to be the causes, as well as any recommendations we had for addressing them. In particular, see our September 2009 report[2] on the use of Categorical Exclusions and our September 2008 report[3] that examined Interior's ability to inspect oil and gas wells. We have identified staffing levels and experience as issues of concern in past reports, and our ongoing work examining oil and gas production verification has revealed similar problems. Beyond the work I have cited, I cannot speak to specific other causes for issues at BLM.

3. Mr. Rusco, are the problems that you found with BLM's use of Section 390 Categorical Exclusions indicative of a broader problem with BLM's management of oil and gas, and if so, what is at the core of that deficiency?

Given that the review of BLM's use of section 390 categorical exclusions conducted for our September 2009 report only examined BLM's management as it related to this oil and gas tool, we cannot draw conclusions about the overall management practices of BLM's oil and gas programs.[4]

[2] GAO, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act, GAO-09-872 (Washington, D.C.: Sept. 16, 2009).

[3] GAO, Mineral Revenues: Data Management Problems and Reliance on Self-Reported Data for Compliance Efforts Put MMS Royalty Collections at Risk, GAO-08-893R (Washington, D.C.: Sept. 12, 2008).

[4] GAO-09-872.

Questions from the Minority:

1. **In the GAO report Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development, your office suggested increasing rental rates and escalating royalty rates as a way to promote more development of federal oil and gas leases. How is making it more expensive to develop on federal lands an incentive, when federal lands already present a higher cost to operators because of the additional regulatory burdens that accompany them?**

In our October 2008 report, we identified increasing rental rates and other tools as ways to increase the speed of moving from leasing to production.[5] Such tools, which effectively increase the cost of holding land or delaying production, may give companies that lease federal land an incentive to complete the work needed to begin producing oil or gas. As we noted in our report, some private and state lands may be more costly to lease than federal lands are now, so it is not clear that such efforts would necessarily make it more expensive to produce oil or gas from federal land. Certainly, not all the tools we cited in our report may be appropriate for all federal lands leased for oil and gas production; however, we believe these tools would be useful for Interior to evaluate.

2. **In the Oil and Gas Leasing report, your office compared the federal leasing procedures to states such as Texas, Alaska and Louisiana. However, as alluded to in the report, there may be "...important restrictions on development activity that do not apply to the same extent for state or private leases." Do you think that the CLEAR Act adequately takes into consideration the additional regulatory burden placed on federal lands compared to state and private lands? What about the legal challenges from environmental groups and others? How should federal lands leasing be different than state and private lands to account for these regulatory and legal differences?**

We have not examined the CLEAR Act to determine whether it adequately considers the important differences in leasing federal lands, as compared to state or private lands. As we noted in our report, there are specific statutory and regulatory requirements associated with developing oil and gas leases on federal land. We have not developed a view of what specific differences in federal leases are needed to fairly address these differences. We have recommended that the Secretary of the Interior consider the information we provided in our October 2008 report on diligent development as well as identified for Congress that it consider directing Interior to conduct a comprehensive review of leasing practices.[6]

3. **In your investigations have you found that states or private landowners are more eager to see development of their lands than the federal government? Do developers on private lands face protests from environmental groups at the same rate as developers on federal lands?**

We have not evaluated the relative interest of private and state mineral and landowners to those of federal policies and officials. I believe that it would be difficult to determine such differences. We have not evaluated the relative rates of environmental or other protests of oil and gas development on federal, state, and private lands.

4. **Your report on Categorical Exclusions stated that while they have been a benefit that they are frequently used differently by the agency due to a lack of clear direction. Do you believe that clearer direction will result in more frequent or less frequent use of categorical exclusions on federal land?**

Whether clearer direction on the use of section 390 categorical exclusions would result in more frequent or less frequent usage would depend on the nature of the clarification. For example, two of the areas that we identified in our September 2009 report that needed clarification and that could impact the frequency with which section 390 categorical exclusions are used include clarifying (1) whether the extraordinary circumstances checklist should be used to screen the use of section 390 categorical exclusions and (2) whether section 390 categorical exclusions are mandatory or discretionary.[7] Using the extraordinary circumstances checklist to screen the use of section 390 categorical exclusions would reduce their use to the extent that any

[5] GAO, Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development, GAO-09-74 (Washington, D.C.: Oct. 3, 2008).
[6] GAO-09-74.
[7] GAO-09-872.

extraordinary circumstances were identified. Conversely, if section 390 of the Energy Policy Act of 2005 was clarified to indicate that the use of section 390 categorical exclusions was mandatory, then their usage would increase. There may also appear to be an increase in usage if BLM field offices begin to apply a separate section 390 categorical exclusion to each well; however, this would be an increase on paper only and not reflect a real increase in usage.

The CHAIRMAN. Thank you both.

Mrs. Kendall, it seems like a major problem here is the BLM and MMS computer systems are completely inadequate for the task at hand. You testified to the lack of communication between the two as being a major problem.

Is it computers or is it a philosophy from above?

Ms. KENDALL. Computers contribute to it.

For instance, in the report we did on nonproducing leases, we discovered that they have two separate systems that, for instance, do not even use the same lease number nor the identical lease. So, they can't even overlap to ensure that lease 1 at BLM may be lease 29 at MMS.

So, there are no tracking systems between the two systems, and it is something as fundamental as not even using the same leasing numbers. And that is one of many examples.

The other is the example I used of beneficial use, which is something that—BLM allows operators to utilize a certain amount of oil and gas during the actual production of oil and gas, but they have to either meet regulatory criteria or BLM has to affirmatively approve this beneficial use.

MMS has no idea whether that approval has been given or not, and operators may claim it and MMS wouldn't know whether it has been approved or whether they met the regulatory criteria and would have no reason to question whether it was a legitimate deduction or not.

These are just two examples of many that we have come across that comprise the communications issue.

The Chairman. Mr. Rusco, do you wish to follow up on that?

Mr. RUSCO. Yes. Our work has also found numerous instances in which BLM and MMS practices are inconsistent with each other. In our ongoing work, in particular on production verification, we have found cases in which the data that is collected at BLM, that could help MMS in their royalty collection activities, are not transmitted in a usable format to MMS for that purpose; and similarly, the data that comes from audits and royalty activities are not always transmitted back to BLM in ways they could use for their oversight in managing ongoing leases.

So, there are many cases in which there are opportunities for improvements in the communication, in the data that is shared and in the systems, so that the systems can be updated and can talk to one another.

The CHAIRMAN. Do both of you believe that provisions in the CLEAR Act may help clear up and coordinate and address some of these inefficiencies?

Mr. RUSCO. Yes, there are several areas where the bill focuses on addressing specific issues that we have raised in our past work, and I can give you a few examples. But—overall we have not looked at the bill in its entirety in our work, and I cannot comment

on the entire bill; but in the areas where the bill has touched on areas in which we have made recommendations, we are in accord with those provisions.

Ms. KENDALL. Likewise, Mr. Chairman, we really believe that a single bureau managing leases and royalties would really help standardize management practices and policies and would, hopefully, eliminate many of the communication issues that we have identified that really do impact the royalty collection process.

The CHAIRMAN. Last year there was some debate, when we had the issue in pending legislation of whether diligent development was already existing law. I am aware that there is a requirement for lessees to drill a well in the first 5 years of an 8-year lease. But are there any other specific performance requirements on other leases, or is it possible to obtain a lease and then hold it for almost the entire length of the primary term where you are actually trying to bring the lease into production or not?

Mr. RUSCO. That is currently correct, yes.

The CHAIRMAN. I have no further questions.

The gentleman from Idaho.

Mr. LAMBORN. Ms. Kendall, I am somewhat confused by statements in your testimony relative to title III and title VII and how they fit together. So, if you could help me by clarifying.

In your statement regarding title III, you said in relation to diligent development that, quote, "Increasing nonproducing lease annual rental rates might help encourage lease holders to develop the leases." But in your statement regarding title VII you said, "It would also establish an index and annual fee $4 per acre for nonproducing leases. Imposing lease fees on nonproducing leases may have the unintended negative impact of reducing industry impact of Federal leases."

Now, I tend to agree with the second of those two statements, but I am confused about the inconsistency between those two. Can you help clarify that for me?

Ms. KENDALL. The comment in the first one, I think, ties into the comment in the second one.

I can't say definitively that increasing fees on leases is going to have a negative effect in the report that we issued on nonproducing leases. Some of the sources that we interviewed suggested that this may have a negative impact. On the other hand, adding some increased rental rates may, in fact, urge people to do something quicker and faster.

I think I am straddling a line in my testimony clearly, because I can't take a position one way or the other. I don't have evidence strongly one side or the other.

Mr. LAMBORN. So, it is still, in your mind, somewhat of an open question as to what the effects would be?

Ms. KENDALL. I would say so, yes.

Mr. LAMBORN. So, it could be that it would be a discouraging thing?

Ms. KENDALL. It could be

Mr. LAMBORN. So, the jury is still out?

Ms. KENDALL. My jury is still out.

Mr. LAMBORN. Thank you for that.

And second, doesn't the Royalty-In-Kind program, should it continue, simplify the process by eliminating the need to calculate the value of oil and gas at particular points in time in particular market conditions, et cetera?

Ms. KENDALL. My personal feeling on this, Congressman, is that the entire oil and gas royalty process, if you will, could be improved, if simplified, pretty much across the board, not just royalty-in-kind.

Mr. LAMBORN. On simplification, is simplification enhanced when a producer has to turn over a particular quantity regardless of what the markets are doing that particular day or that month or that week?

Ms. KENDALL. I am not sure I understand your question, or may not be qualified to answer it.

Mr. LAMBORN. If an assessment is made based on quantity produced, you are going to have to peg that to win that barrel of oil or win that cubic foot of gas that came out of the ground because markets fluctuate continually, they are volatile, they change hour by hour. So, the value of that barrel of oil or that cubic foot of gas varies from hour-to-hour, from day-to-day.

Ms. KENDALL. I recognize that.

Mr. LAMBORN. So, isn't it simpler for the producers just to turn over a percentage and not have to have them calculating and then you auditing on a continual basis, when did that come up from the ground and what was the price at that moment in time? Doesn't that get into a lot of complications?

Ms. KENDALL. I think it is very complicated. The suggestion that there is auditing of the royalty-in-kind, there really isn't. There is very little auditing of the royalty-in-kind. So, I am not sure that we actually have the data to suggest that one over the other is the more beneficial to the taxpayer, to the Treasury.

And I am trying to think of a concrete example that I can give, and I am failing at the moment

Mr. LAMBORN. Are you saying that you are going to come back and ask, or the Department will come back and ask, for more personnel, more staff, and more resources because it is going to involve a lot more monitoring and auditing and calculating and everything else?

Ms. KENDALL. I am not saying that, no, sir.

Mr. LAMBORN. That is my suspicion. And I wanted to get your view on that.

Ms. KENDALL. Well, I would say, though, with the elimination of royalty-in-kind, if it is eliminated, there would be a need for some additional auditors to audit the way the auditors are now conducting their work; I wouldn't say significantly, but there may be a need for some additional auditors because there simply aren't auditors covering the Royalty-In-Kind program.

Mr. LAMBORN. Are you in a position to say how many people you think that would involve?

Ms. KENDALL. I am certainly not.

Mr. LAMBORN. And then with the people who are currently in the royalty-in-kind office, like in Denver in my State, are they going to be transferred to another division? Or will they just be let go, or do you have any idea of what would happen to them?

Ms. KENDALL. I don't know.

I heard the Secretary's statement this morning for the first time, as well as I think many of the members here did. But there are certainly processes in place in the Federal personnel rules that would protect them to a certain extent; and to the extent that they could be protected or transferred to another function, I wouldn't imagine that you would see a massive elimination of employees—perhaps a transfer of function.

Mr. LAMBORN. That is something we certainly want to be looking at as we go forward.

Thank you.

The CHAIRMAN. The Chair wishes to thank the panel very much for your patience and being with us through this day and also for your work on behalf of the American taxpayers to ensure that they do receive fair value for the use of their resources.

And we look forward to continuing to use your expertise in investigations as we move forward with this legislation and other legislation.

Mr. LAMBORN. Before we adjourn, I would like to ask unanimous consent to submit for the record the collection of letters from the Harrison family, mentioned by Mr. Bishop of Utah earlier, regarding the consequences of actions in Utah by the Secretary and unanimous consent to submit for the record the CRS report on land leasing, correcting the earlier record on the volume of land under the Clinton and Bush Administrations.

The CHAIRMAN. Without objection, so ordered.

[NOTE: The information submitted for the record has been retained in the Committee's official files.]

The CHAIRMAN. With that, the Committee on Natural Resources stands adjourned.

[Whereupon, at 2:35 p.m., the Committee was adjourned.]

○

LEGISLATIVE HEARING (PART 2) ON H.R. 3534, TO PROVIDE GREATER EFFICIENCIES, TRANSPARENCY, RETURNS, AND ACCOUNTABILITY IN THE ADMINISTRATION OF FEDERAL MINERAL AND ENERGY RESOURCES BY CONSOLIDATING ADMINISTRATION OF VARIOUS FEDERAL ENERGY MINERALS MANAGEMENT AND LEASING PROGRAMS INTO ONE ENTITY TO BE KNOWN AS THE OFFICE OF FEDERAL ENERGY AND MINERALS LEASING OF THE DEPARTMENT OF THE INTERIOR, AND FOR OTHER PURPOSES. "THE CONSOLIDATED LAND, ENERGY, AND AQUATIC RESOURCES ACT OF 2009"

Thursday, September 17, 2009
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:06 a.m. in Room 1324, Longworth House Office Building, The Honorable Nick J. Rahall [Chairman of the Committee] presiding.

Present: Representatives Rahall, Faleomavaega, Bordallo, Heinrich, Capps, Shea-Porter, Hastings, Duncan, Gohmert, Bishop, Coffman, and Lummis.

The CHAIRMAN. The Committee on Natural Resources will come to order. The Committee is meeting today to continue the legislative hearing on H.R. 3534, the CLEAR Act. Does the Ranking Member or any Member wish to make an opening statement? Yes?

STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you, Mr. Chairman, and thank you for holding this second hearing. This is a very important issue that our country needs to face. Yesterday, I discussed how I thought this bill

would set up roadblocks on the path to energy development, instead of opening up additional areas for drilling. In my view, this bill raises fees, expands government bureaucracy, rolls out more red tape, and delays greater wind, solar, oil and natural gas production.

I would like to today explain how these roadblocks would affect everyday Americans. First, these roadblocks will slow America's oil, natural gas, wind, and solar energy production, and ultimately would make, in my view, energy more expensive.

While the average price of gasoline is about $2.55 a gallon right now, this, unfortunately, will always be the case. Before we know it the American people will be forced to pay more at the pump again, and that is when they will reach for their wallets and ask, "Why didn't the Administration and Congress take action to actually increase all types of energy production?" And Americans will not like the answer. Unless we take action on an all-of-the-above energy plan, the Administration and the Democrats in Congress will have to explain that they were focused on legislation that will actually make it harder and more expensive to produce American energy.

Second, the roadblocks in this bill will increase our reliance on foreign sources of energy from countries that I do not believe live up to American's high environmental standards. Saudi Arabia, Cuba, Russia, Venezuela and other nations are increasing their energy supply at a great pace and America is at a standstill.

This Committee is considering legislation that will make our nation less energy independent and less secure. As the American Chemistry Council recently wrote, and I quote, "The bill fails to contribute in any way to the energy security of the United States."

Finally, these roadblocks threaten current energy jobs and prevent the creation of new American energy jobs at a time when almost 10 percent of Americans are unemployed. This last week the PriceWaterhouse study confirmed that oil and gas industries contribute over 9 million full-time and part-time jobs, accounting for over 5 percent of our nation's total employment. When nearly 15 million Americans are out of work, the last thing our country needs is for Congress to pass a bill that will eliminate even more jobs in our country. Instead we should be focusing on paying even more Americans to take advantage of the high-paying jobs in all parts of our energy sector.

Unfortunately, the Democratic leaders in Congress have focused on passing a national energy tax bill and a roadblock to an energy bill that will only make our current economic problems worse.

So, I continue to urge my colleagues on both sides of the aisle to choose a better path forward by supporting all of the above energy plans that will help Americans by creating new high-paying jobs and protecting our environment, and more importantly, providing affordable energy.

Thank you, Mr. Chairman. I yield back my time.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, Ranking Member, Committee on Natural Resources

Thank you, Mr. Chairman. Today is the second day of hearings on this legislation.

Yesterday, I discussed how this bill will set up road blocks on the path to energy development. Instead of opening additional areas for drilling, this bill raises fees and taxes, balloons government bureaucracy, rolls out more red tape, and delays greater wind, solar, oil and natural gas production.

Today, I would like to explain how these roadblocks would directly impact Americans.

First, these roadblocks will slow America's oil, natural gas, wind and solar energy production and ultimately make energy more expensive. While the average price of gas is about $2.55 a gallon right now, this unfortunately won't always be the case. Before we know it, the American people will be forced to pay more at the pump again. And when they reach for their wallets, they'll ask "why didn't the Administration and Congress take action to actually increase all types of domestic energy?" Americans won't like the answer. Because unless the Administration and Democrat Leaders in Congress take action on an all-of-the-above energy plan, they'll have to explain that they were focused on legislation that will actually make it harder and more expensive to produce American energy.

Second, the roadblocks in this bill will increase our reliance on foreign sources of energy from countries that don't live up to America's high environmental standards. Saudi Arabia, Cuba, Russia, Venezuela, and other nations are increasing their energy supply at a break neck pace—but America is at a standstill. And our Committee is considering legislation that will make our nation less energy independent and less secure. As the American Chemistry Council recently wrote "the bill fails to contribute in any way to the energy security of the United States."

And finally, these roadblocks threaten current energy jobs and prevent the creation of new American energy jobs at a time when almost ten percent of Americans are unemployed. Last week, a PriceWaterhouse study confirmed that oil and gas industries contribute 9.2 million full-time and part-time jobs, accounting for 5.2 percent of our Nation's total employment. When 14.7 million Americans are out of work, the last thing our country needs is for Congress to pass a bill that will eliminate even more jobs in our country. Instead, we should be focused on helping even more Americans take advantage of high-paying jobs in all parts of the energy sector.

But unfortunately, Democrat Leaders in Congress are focused on passing a National Energy Tax bill and a Roadblock to Energy bill that will only make our current economic problems worse.

I continue to urge my colleagues on both sides of the aisle to choose a better path forward by supporting the Republican all-of-the-above energy plan that will help Americans by creating new high-paying jobs, protecting our environment, and providing affordable energy.

The CHAIRMAN. Do any of the other Members wish to make opening statements? If not, we will proceed with the panel.

The first panel is composed of The Honorable Stephen B. Smith, the Mayor of Pinedale, Wyoming; Ms. Danielle Brian, Executive Director of the Project On Government Oversight; Mr. Christopher Mann, the Senior Officer, Pew Environment Group, the Pew Charitable Trusts; Mr. Mark Squillace, Professor and Director, Natural Resources Law Center, University of Colorado School of Law; and Mr. Lyle E. Hodgskiss, Rancher/Senior Loan Officer, Rocky Mountain Front Advisory Committee.

Lady and gentlemen, we welcome you to our Committee today, appreciate your being with us. We do have copies of all your prepared testimony. They will be made part of the record as if actually read. You may proceed in the order in which I announced you and in the manner you wish in the five-minute time limit.

Mr. Mayor, you go first.

STATEMENT OF THE HONORABLE STEPHEN B. SMITH, MAYOR, PINEDALE, WYOMING

Mr. SMITH. Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today. My name is Stephen Smith, and I serve as the mayor of Pinedale, a small town

with about 1,600 people in the upper Green River Valley in western Wyoming.

Pinedale is the county seat of Sublette County with a population of around 7,500, and nearly half of the county's residents live within five miles of our town. In a county larger than the State of Connecticut, 80 percent of our lands are Federally managed. We are also home to one of the largest natural gas fills in the United States.

I come before you not as an expert on energy policy or an advocate for or against the energy industry. I am here to speak of the concerns and challenges that we as a community have experienced over the past few years and to share my opinions on the proposed legislation.

Natural gas exploration and production in Sublette County has changed the dynamics of our community over the past few years. We are traditionally a community rooted in agriculture and tourism. The natural gas fields around Pinedale are not a recent discovery, and were known to hold great reserves, but only a few years ago the technology become available to successfully extract this resource and Pinedale changed overnight.

The development of the gas fields has been of significant economic benefit to our community but has also brought challenges. One of our greatest concerns in light of energy development has been the socio-economic impacts of a rapidly increased population. These include the need for local governments to provide new and updated infrastructure, build new medical clinics, support child care facilities, as well as addressing increases in crime, traffic, and calls for emergency services.

Even more important than socio-economic issues are our citizens' concerns over real and potential health hazards. Over the past three years we have had numerous ozone alerts in our county, the first ever, with ozone levels exceeding maximum established by the U.S. Environmental Protection Agency. Air quality in the valley, and especially in the Class 1 air shed of the wilderness is declining and needs to be addressed.

Local citizens have rallied around these issues and have taken their concerns to both state and Federal agencies. The Wyoming Department of Environmental Quality has been active in monitoring air quality and ozone, and although their efforts are ongoing we see no relief for the situation. Similar concerns have been raised over water quality and the potential of contaminated wells from chemicals used in the drilling process.

Because of the large amount of Federal ownership in Sublette County, House Resolution 3534 would certainly affect the future of development in our area. There are certain portions of this proposed legislation on which I would like to comment; the first being Title 3, Section 306, best management practices.

In my opinion, the use of best available technology should be required for all energy development on Federal lands. Industry in our area is currently moving in that direction, using some natural gas-burning engines for drilling, and introducing a loose gathering system on the Pinedale Anticline. These are two examples of voluntary and proactive steps taken by some operators and we are hopeful that this trend might continue.

Requiring these practices ensures the most current technology continues to be implemented and used in both exploration and development.

Second, H.R. 3534 addresses the elimination of categorical exclusions. From October 2006 through May of 2009, over 1,500 applications to drill were approved with the use of these categorical exclusions out of the Pinedale BLM field office alone. Use of this magnitude circumvents proper analysis of large-scale development and goes against the intentions of NEPA.

This legislation does not, however, address the issue of social and economic concerns, their identification and mitigation. The town and the county have had extensive conversations with the BLM, the Governor's office, and our congressional delegation on this subject in hopes of alleviating some of the impacts our community has endured. In the future, socio-economic matters should be considered and mitigated at all stages of planning and development in the same manner as physical and environmental impacts.

I understand the need for energy development and its economic benefit not only to the Town of Pinedale but to our nation as a whole. On the other hand, I also understand the social and economic impacts that it has had on the citizens of my community and surrounding areas. I therefore thank you for taking the time to hear the concerns of a small community and possibly addressing them in this bill. I look forward to answering any questions you may have.

[The prepared statement of Mr. Smith follows:]

Statement of Stephen B. Smith, Mayor, Pinedale, Wyoming

Pinedale, Wyoming is a small town of about 1,600 people in the upper Green River Valley in western Wyoming. It is located at 7,200 feet and surrounded on three sides by magnificent mountain ranges. Pinedale is the county seat of Sublette County, population around 7,500, and nearly half of the county's residents live within 5 miles of town. In a county larger in size than the state Connecticut, 80% of our lands are federally managed. We are also home to one of the largest natural gas fields in the continental United States.

Natural gas exploration and production in Sublette County has changed the dynamic of our community over the past few years. We are traditionally a community rooted in agriculture and tourism. The natural gas fields around Pinedale were explored in the early 1980s and were known to hold great reserves, but only a few years ago technology became available to successfully develop this resource. Pinedale changed overnight.

The development of the gas fields has been of significant economic benefit to the community. It has also brought challenges.

One of our greatest concerns in light of energy development has been the socio -economic impacts of a rapidly increasing population. These include the need for new and updated infrastructure, providing childcare, increased crime, increased traffic, demands on emergency services and health care as well as growing class room sizes.

Even more important than socio-economic issues are citizens' concerns over potential health hazards. Over the past three years we have had numerous ozone alerts in our county with ozone levels exceeding maximums established by the U.S. Environmental Protection Agency. These were the first ozone alerts in the history of Sublette County. In the spring of 2007, due to gasfield NO_x and VOC emissions, 8hr-ozone ground level levels in the Pinedale area spiked as high as 122ppb (the national ambient air quality standard to protect public health is set at 75ppb). This is of special concern in an urban area, let alone a rural community and county of 7,500 people. Air quality in the valley and especially in the class one air shed of the Bridger Wilderness is declining and needs to be addressed. Local citizens have rallied around these issues and have taken their concerns to state and federal agencies. The Wyoming Department of Environmental Quality has been active in moni-

toring air quality and ozone and their efforts are ongoing. Similar concerns have been raised over water quality.

Because of the large amount of federal ownership in Sublette County, House Resolution 3534 would certainly affect the future of development in our area. There are certain portions of this proposed legislation on which I would like to comment, the first being Title 3 Section 306 Best Management Practices. The use of best available technologies should be required for all energy development on federal lands. Industry in our area is currently moving in that direction, using some natural gas burning engines for drilling, and introducing a liquid gathering system on the Pinedale anticline. These are two examples of voluntary and proactive steps taken by some operators. Requiring these practices ensures the most current technology continues to be implemented and used in both exploration and development. The requirements should be specific, measurable and enforceable.

Secondly, HR3534 addresses the elimination of categorical exclusions. From October 2006 through May of 2009 over 1500 applications to drill were approved with the use of these categorical exclusions out of the Pinedale BLM field office alone. This constitutes over 80% of the permitting by our local field office in the past three fiscal years. Use of this magnitude circumvents proper analysis of large field development and goes against the intentions of NEPA.

This legislation does not however address the issue of social and economic concerns, their identification and mitigation. The town and the county have had extensive conversations with the BLM, the Governor's office and our Congressional delegation on this subject. Socio-economic matters should be considered and mitigated at all stages of planning and development in the same manner as physical and environmental impacts.

In February 2008 the Town of Pinedale submitted official comment to the BLM on its draft of the Supplemental Environmental Impact Statement. In these comments specific concerns were raised over socio-economic matters and the need for mitigation of these issues. Below are a few examples of these comments:

"If the BLM approves a planning document which, in reality, allows for the fastest possible energy development on lands surrounding Pinedale, the Town of Pinedale asks BLM managers to create provisions in the final EIS which would provide on-the-ground resources for the Town of Pinedale to address the social and economic impacts that we will continue to bear with rapid energy development."

"We applaud the mitigation fund proposed by the operators for off-setting on site impacts increased development. However, it appears that there is no direct mitigation commitment for the substantial socioeconomic impacts that our town will sustain from the proposed dramatic increase of the current amount of energy development today."

These comments were not addressed in the Record of Decision and have yet to be resolved.

Energy development and its economic benefits are not only important to the town of Pinedale, but to the country as a whole. But regulating this development in order to address socio-economic impacts is vital to protecting my community and other potential areas of development.

Attached please find two documents, the first of which is a document outlining the categorical exclusions and their use in the BLM's Pinedale Field Office; and the second being a letter to Governor Freudenthal from the elected officials in Sublette County, outlining our highest priority socio-economic needs.

Categorical Exclusions (CXs) Fact Sheet

June 2009

What they are:

Activities conducted on public lands (primarily oil and gas development activities) that are excluded from environmental review and impact analyses. These activities and their potential impacts are normally reviewed and analyzed, with adequate public input, according to the requirements of the National Environmental Policy Act (NEPA). Analysis is conducted and contained in NEPA documents such as the Pinedale Anticline Environmental Impact Statement (EIS). Applicability of CXs is presumed for all oil and gas development, but subject to rebuttal (called a rebuttable presumption).

How they came to be:

CXs were established in Section 390 of the Energy Policy Act of 2005.

What they say:

If a proposed oil and gas activity fits into one of these five categories, then the application of a categorical exclusion shall be presumed if:

(1) Individual surface disturbances are less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) An oil or gas well is drilled at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of "spudding" (beginning to drill) the well.

(3) An oil or gas well is drilled within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) A pipeline is placed in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) There is maintenance of a minor activity, other than any construction or major renovation of a building or facility.

Why the use of CXs has raised concerns in the Pinedale BLM Field Office:

In both the Jonah and Pinedale Anticline EISs, BLM has made commitments to conduct additional, site-specific environmental analyses when Applications for Permit to Drill (APDs) are filed. "The Authorized Officer will review and authorize each component of the project that involves disturbance of federal lands on a site-specific basis." (Jonah ROD, pg. 3.)

However, BLM has used CXs to circumvent site-specific review, so impacts have not been thoroughly analyzed, and the public has been deprived of the opportunity to examine or comment on impacts, as required by NEPA.

Simply put, complete and accurate federal agency analysis and public oversight of impacts from oil and gas development to public resources is inadequate or missing altogether.

What are the problems with authorizing development under CXs?

As we have seen in Pinedale, water quality, air quality, and wildlife impacts have grown exponentially since natural gas development began:

Water Quality Contamination

89 industrial water wells & 1 livestock well have been contaminated w/ hydrocarbons;

~14 contaminated wells have been plugged by the operators, preventing further monitoring;

13 water wells have low levels of methane present at the surface, making them too dangerous to monitor;

Some high-elevation lakes monitored in the Wind River Range are experiencing decreasing acid neutralizing capacity (indicating a tendency toward acidification).

Air Quality Contamination

Ozone levels have exceeded the federal, 8-hour standard over a three-year period, prompting the Governor to request a "non-attainment" designation from the EPA;

Visibility impacts in the Bridger Wilderness Class I airshed have exceeded the Forest Service and BLM standards of no more than 0 days of visibility impairment above (respectively) the 0.5 and 1.0 deciview change thresholds. Visibility impairment in the Bridger Wilderness is predicted by BLM to occur 67 days per year.

Wildlife Population Declines

30% reduction in mule deer populations on the Anticline over a 7-year study period, compared to the control area (46% decline during the first 4 years of the study);

51-89% decline in sage-grouse male lek attendance in the Anticline and Jonah Fields, with a predicted local extirpation of the bird within 19 years, contributing to the need to list the greater sage-grouse as an endangered species;

Habitat fragmentation of previously undisturbed lands may lead to reduced pronghorn usage and ultimate abandonment of habitat.

How many Applications to Drill are approved with the use of CXs in the Pinedale BLM?

Here are counts for the categorical exclusions used over the past few years in the BLM Pinedale Field Office. It appears that BLM is now processing a majority of APDs as CXs.

2008 (10/01/07 through 09/30/2008)

Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5
50	320	294	1	5

Total CXs used: 670
Total APDs approved: 762
Percentage of total CXs used to total APDs approved: 88%

2009 (10/01/08 through 05/19/2009)

Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5
5	7	518	1	1

Total CXs used: 532 (but not all are applied to APDs; they also apply to sundry notices and realty actions).
Percentage of total CXs used to total APDs approved: ~85-90%

What are the solutions?

1. EPA could initiate discussions with Council on Environmental Quality (CEQ) to amend the Energy Policy Act and rescind all statutory CX provisions.
2. APDs could be issued with a "contingency rights" clause, so that permits that may cause environmental damage are not grandfathered in.
3. If used, all proposed categorical exclusions authorized by Sec. 390 of the Energy Policy Act of 2005 should conform with 40 CFR 1507.3, which states that BLM must, (a) ...utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the human environment. (b) Identify methods and procedures—to insure that presently unquantified environmental amenities and values may be given appropriate consideration.
4. If used, all proposed categorical exclusions authorized by Sec. 390 of the Energy Policy Act of 2005 should conform with current Department of the Interior policies for applying the "extraordinary circumstances" screen to categorical exclusion proposals found at 69 FR 10878, in which: "a normally excluded action may have a significant environmental effect thus requiring additional analysis and action.—Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action."
5. Promote better planning and use of superior strategies for evaluating landscape-scale cumulative impacts to wildlife habitat and ecological communities while minimizing the amount of well-by-well consultation and mitigation planning. Instructional Memorandum IM 2003-152 (April 13, 2003), outlines the use of geographic area NEPA analysis and comprehensive development plans and strategies.

(For more information: Linda Baker, Upper Green River Valley Coalition: 367-3670 or email: linda@uppergreen.org.)

Federal Funding- Town of Pinedale

1. In Fiscal Year 2009 (July 1, 2008 through June 30, 2009) the Pinedale Airport Board received $2,201,173.00 from the FAA. In Fiscal Year 2008 (July 1, 2007 through June 30, 2008) the Pinedale Airport Board received $1,384,619.00 from

the FAA. This information was taken from the Survey of Local Government Finances Form F-32.

Jim Parker
Airport Manager-Pinedale

2. The Town of Pinedale was recently awarded approximately $6.6 million in ARRA funding. To date, the Town has not received or drawn on these funds.

Eugene Ninnie, PE
Engineer- Pinedale

Sublette County, WY	Town of Big Piney	Town of Marbleton	Town of Pinedale
William W. Cramer, Commissioner John P. Linn, Commissioner Joel E. Bousman, Commissioner	Phillip Smith, Mayor	Jim Robinson, Mayor	Stephen Smith, Mayor

February 9, 2009

Governor Dave Freudenthal
Capitol Building
200 West 24th Street
Cheyenne, WY 82002

Dear Governor Freudenthal:

We have reached the point of preparing a single priority list of the most urgent infrastructure needs to address the socio-economic impact of energy development throughout Sublette County. Our current estimate of the total cost to implement this list is $71.1 million, of which we are short $62.6 million in funds. We appreciate your patience over the last several years in helping to get us to this point.

Although our community has benefited enormously from energy development, our list illustrates that the costs of maintaining infrastructure and public services have outstripped our ability to fund these necessities. The towns in particular are at a disadvantage in funding infrastructure needs. They receive little in property tax receipts and rely on sales tax for the majority of their overall revenues. Sales tax receipts are generated by those who work and live in our communities, and have steadily risen over the past several years. They currently contribute an average of 74% of total revenue to the towns. In contrast, town revenue in the form of state severance taxes and federal mineral royalty taxes have changed only slightly during the same time period, as shown in Figure 1. These funds, which originate from tax monies paid directly by energy operators to the state and federal government, contribute little to overall revenue.

During the past four years, Sublette County and its municipalities have invested $69.2 million in infrastructure improvements, of which the state contributed $15 million through State Land Investment Board (SLIB) funding[1]. We still have a long way to go. Our priority list contains projects which we believe are essential for the continued health, safety, and well-being of those who live and work within our county and our municipalities.

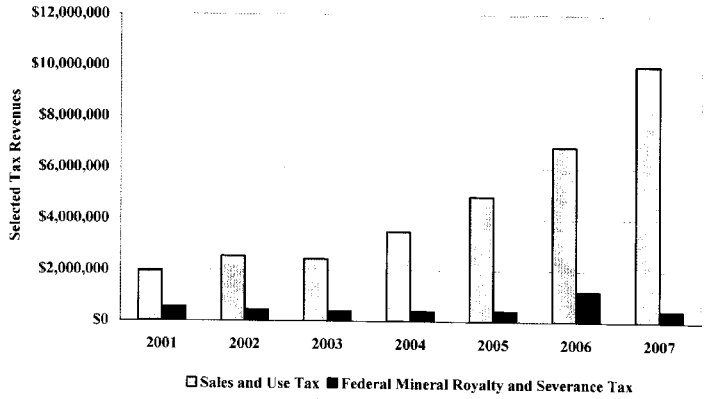
Please note that the pressing infrastructure needs expressed in this letter are just a portion of overall needs within the county and towns. Attached to this letter is a comprehensive list/map of infrastructure projects for each jurisdiction with current cost estimates. The cumulative list totals $160.1 million, of which $71.1 million is identified in this letter.

Below, please find information on the most critical infrastructure needs in our communities. Our signatures signify our collective agreement to the listings, and, to the best of our knowledge, we vouch for the accuracy of the information included. As our next step we request that you review our list of needs and offer suggestions and advice on how we could best succeed in our joint efforts. One option is to

[1] Jeanne Norman, Office of State Lands and Investments, State of Wyoming, June 2, 2008.

utilize the Sublette Community Partnership to discuss this list with key industry representatives and seek their pledges toward cost sharing.

Figure 1 Cumulative Federal Mineral Royalty, Severance, and Sales and Use Tax Revenue to Pinedale, Big Piney, Marbleton 2001-2007



Sources: Town of Big Piney financial statements 2001-2003; Town of Marbleton financial statements 2001-2003; Town of Pinedale financial statements 2001-2003; Treasurer of the State of Wyoming Annual Reports 2001-2007; Wyoming Department of Revenue Reports 2004-2007

Sewer and Water Repair and Maintenance

Pinedale's existing sewer infrastructure is 80 years old and disintegrating. Current sewer and water lines are made of clay which is cracked and broken throughout the system. All lines within Pinedale will be replaced by 2014. Phases 5 and 6 of the Pinedale Sewer Replacement Project will replace 32,000 linear feet of pipe. At the same time, roads affected by these phases will be repaired or resurfaced. Marbleton's existing sewer lagoon freezes during the winter and has been out of compliance with Department of Environmental Quality standards for at least the past eight years. Big Piney's water and sewer lines are 50 years old and made of cast iron. Lines are broken throughout the system and must be replaced. Big Piney has already replaced the town's sewer lines and is in the process of replacing all water lines. At the same time, affected roads will be repaired or resurfaced.

Table 1 lists the highest priority sewer and water repair and maintenance projects in Sublette County's towns. Additionally, the overall project costs, the funds currently available for each project, and the shortfall for each project are identified.

Table 1 Sewer and Water Repair and Maintenance Costs (Arthur 2008; Hurd 2008; Murphy 2008; Ninnie 2008)

Location	Project	Project Cost	Funds Available	Shortfall
Pinedale	Sewer Repair, Phases 5 and 6	$16.4 million	$2.0 million	$14.4 million
Marbleton	Aerated Sewer Lagoon	$5.1 million	$2.9 million	$2.2 million
Big Piney	Water Line Replacement	$9.1 million	$400,000	$8.7 million
Total		**$30.6 million**	**$5.3 million**	**$25.3 million**

Water Supply and Treatment

Two water towers serve the town of Marbleton and are the only sources of water for energy operators in the area. One of Marbleton's two water towers is very old and structurally unreliable, requiring replacement. In addition, Marbleton recently drilled an additional well to provide domestic and commercial water but found that fluoride levels were unacceptably high. Treatment is required to remove the excess fluoride. Pinedale's drinking water is obtained from Fremont Lake. The Environmental Protection Agency requires all surface water to be filtered or otherwise treated for microbes. Big Piney has two historic landfills that must be monitored to maintain water quality. Table 2 lists the highest priority water supply and treatment projects in Sublette County.

Table 2 Water Supply and Treatment Costs (Murphy 2008; Ninnie 2008)

Location	Project	Project Cost	Funds Available	Shortfall
Marbleton	Fluoride Treatment, Water Tower Replacement	$1.6 million	$249,000	$1.4 million
Pinedale	EPA-Mandated Ultraviolet Water Treatment	$3.8 million	None	$3.8 million
Big Piney	DEQ-Mandated Groundwater Monitoring	$125,000	None	$125,000
Total		**$5.5 million**	**$249,000**	**$5.3 million**

Road Repair and Maintenance

Traffic on the Calpet Highway and the Dry Piney Road has increased tremendously since 2000, turning them into high-use roads with an accelerated need for maintenance. A substantial number of vehicles travel these roads annually, with 20% being larger than a pickup. The cost of paving is approximately $1.1 million per mile. Table 3 lists the highest priority road repair in Sublette County.

Table 3 Road Repair (Lankford 2008)

Location	Project	Project Cost	Funds Available	Shortfall
Sublette County	Repave Calpet Highway and Pave Dry Piney Road (32 miles)	$35 million	$3 million	$32 million

We will be happy to provide more information or answer any questions you may have. Thank you for your continued support for and interest in addressing Sublette County's energy-related impacts.

Sincerely Yours,

Stephen Smith
Mayor, Pinedale

Jim Robinson
Mayor, Marbleton

Phillip Smith
Mayor, Big Piney

Joel E. Bousman
Commissioner,
Sublette County

William W. Cramer
Commissioner,
Sublette County

John P. Linn
Commissioner,
Sublette County

Response to questions submitted for the record by Hon. Stephen B. Smith, Mayor, Pinedale, Wyoming

1. Mayor Smith, H.R. 3534 would raise rental rates for oil and gas from $1.50 to $2.50 an acre. Are you concerned that such an increase—of $1—would stifle energy development in the Pinedale region and cost jobs?

Based on the mass amount of natural gas in Sublette County, as well as the profitability of the resource, it is my opinion that the suggested increase would have no measurable impact.

2. Mayor Smith, over the past three years the BLM Pinedale field office has issued roughly 1,500 categorical exclusions to permit oil and gas activities, more than any other field office. Last week, the GAO issued a report saying that the BLM has frequently violated the law when doing this,

and that such violations have, quote, "thwarted NEPA's twin aims of ensuring that both BLM and the public are fully informed of the environmental consequences of BLM's actions." What has the impact of this been on the ground?

Use of CXs have expedited development in our community. This fast paced development has made it very difficult to proactively address the impacts we currently face. Cumulative impacts have not been adequately addressed with the issuance of these CXs as they relate to air quality, water quality, wildlife and human community.

3. Mayor Smith, you've mentioned that your community dynamic has changed—that natural gas drilling has brought challenges, and you mention several of those—air quality, water quality, the need to require best management practices. Do you think that BLM has appropriately balanced conservation with the need to get energy out of the ground in the Pinedale area? If not, do you think this legislation will help to reestablish that balance?

While BLM and industry have made efforts to mitigate wildlife and other conservation issues, the lack of an appropriate balance is evidenced by:

- 30% reduction of mule deer populations
- Sublette County's identification as a potential non-attainment area (ozone) by the EPA
- Concerns over air quality in the class 1 air shed of the Bridger Wilderness
- Serious declines in male sage grouse population in the Jonah Field and Pinedale Anticline

This legislation may increase the balance by bringing the original intentions of NEPA back into play. Site specific impacts and cumulative analyses are essential in achieving balance.

4. Mayor Smith, the Committee was surprised to hear about ozone problems in such a rural place as Sublette County—ozone problems that sound more typical of a place like Los Angeles, not a place with as much space and as few people as Pinedale. Please tell us more about the scope of the air quality problems in Sublette County and what is happening with oil and gas development that has led to such problems? How can development be done better to address those impacts?

The scope of air quality problems in Sublette County can be directly linked to development on the Jonah Field and Pinedale Anticline. Pace and intensity of development are two of the main contributors to the concerns over air quality in general. There is also strong speculation that this unmitigated pace and intensity directly contributes to increases in NO_x and VOCs. Mandating the use of best available technologies, measuring cumulative emissions and enforcing stricter penalties are a few suggestions to address these impacts.

5. Mayor Smith, much was made of an attachment to your testimony relating to Categorical Exclusions, also known as CXs. As you know, CXs were established in Section 390 of the Energy Policy Act of 2005 and cover activities conducted on public lands (primarily oil and gas development activities) that are excluded from environmental review and impact analyses. These activities and their potential impacts are normally reviewed and analyzed, with adequate public input, according to the requirements of the National Environmental Policy Act (NEPA). Analysis is conducted and contained in NEPA documents such as the Pinedale Anticline Environmental Impact Statement (EIS). Applicability of CXs is presumed for all oil and gas development, but subject to rebuttal (called a rebuttable presumption). If a proposed oil and gas activity fits into one of five categories, then the application of a categorical exclusion shall be presumed if the activity is limited or will cause limited environmental effect. However, according to a recent report by the GAO, BLM has used CXs to circumvent site-specific review, so impacts have not been thoroughly analyzed, and the public has been deprived of the opportunity to examine or comment on impacts, as required by NEPA. GAO found that BLM had "thwarted NEPA's twin aims of ensuring that both BLM and the public are fully informed of the environmental consequences of BLM's actions." Simply put, complete and accurate federal agency analysis and public oversight of impacts from oil and gas development to public resources is inadequate or missing altogether.

The attachment to your testimony stated that some of the effects of misuse of the CXs include:

"Water Quality Contamination

- 89 industrial water wells & 1 livestock well have been contaminated w/ hydrocarbons;
- ~ 14 contaminated wells have been plugged by the operators, preventing further monitoring;
- 13 water wells have low levels of methane present at the surface, making them too dangerous to monitor;
- Some high-elevation lakes monitored in the Wind River Range are experiencing decreasing acid neutralizing capacity (indicating a tendency toward acidification).

Air Quality Contamination

- Ozone levels have exceeded the federal, 8-hour standard over a three-year period, prompting the Governor to request a "non-attainment" designation from the EPA;
- Visibility impacts in the Bridger Wilderness Class I airshed have exceeded the Forest Service and BLM standards of no more than 0 days of visibility impairment above (respectively) the 0.5 and 1.0 deciview change thresholds. Visibility impairment in the Bridger Wilderness is predicted by BLM to occur ~67 days per year.

Wildlife Population Declines

- 30% reduction in mule deer populations on the Anticline over a 7-year study period, compared to the control area (46% decline during the first 4 years of the study);
- 51-89% decline in sage-grouse male lek attendance in the Anticline and Jonah Fields, with a predicted local extirpation of the bird within 19 years, contributing to the need to list the greater sage-grouse as an endangered species;
- Habitat fragmentation of previously undisturbed lands may lead to reduced pronghorn usage and ultimate abandonment of habitat."

That attachment also included the following data regarding the number of CXs issued by the BLM Pinedale field office:

"2007 (10/01/06 through 09/30/07)

Total CXs used: 540
Total APDs approved: 648
Percentage of total CXs used compared to total APDs approved: 83%
(Breakdown by category not available)

2008 (10/01/07 through 09/30/2008)

Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5
50	320	294	1	5

Total CXs used: 670
Total APDs approved: 762
Percentage of total CXs used to total APDs approved: 88%

2009 (10/01/08 through 05/19/2009)

Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5
5	7	518	1	1

Total CXs used: 532 (but not all are applied to APDs; they also apply to sundry notices and realty actions).
Percentage of total CXs used to total APDs approved: ~85-90%"

6. Can you confirm that these statements and data are accurate?

References for information stated in the CX fact sheet can be found at the following links. Additional information can be found by contacting the Pinedale BLM office.

Water Quality Contamination

- Go to Figure 17 here to see all the monitored water wells with measurable petroleum hydrocarbons during the period Sept. 2006 to Dec. 2007: http://www.blm.gov/pgdata/etc/medialib/blm/wy/field-offices/pinedale/pawg/2008.Par.55477.File.dat/HydrogeologicConceptualModel__appa.pdf.

Air Quality Contamination

- DEQ's Boulder monitor for years 05, 06 & 07 showing the average over that 3-year period, which indicate that our ozone levels were 0.080 ppm, over the 0.075 federal standard.
- "Visibility impairment in the Bridger Wilderness is predicted by BLM to occur ~67 days per year, see Table E.12.3 here: http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/pfodocs/anticline/fseis.Par.27527.File.dat/08AQappE.pdf

Wildlife Population Declines

- "30% reduction in mule deer populations on the Anticline over a 7-year study period, compared to the control area," see under "Reports" here: http://www.west-inc.com/big__game__reports.php
- Sawyer, H., R. Nielson, and D. Strickland. 2009. Sublette Mule Deer Study (Phase II) Final Report. Western Ecosystem Technology, Inc., Cheyenne, WY. See page 5-11, which states, "Our helicopter count data indicate that mule deer abundance in the treatment area (Mesa) declined by 30% during the first 7 years of gas development."..."there is no evidence that suggests any segments of the Sublette Herd Unit have declined at a rate comparable to that in the treatment area." "Habitat fragmentation of previously undisturbed lands may lead to reduced pronghorn usage and ultimate abandonment of habitat."
- Wildlife Conservation Society report, page 46 last sentence states, "continual fracturing of previously undisturbed lands is leading to reduced usage and abandonment of habitat parcels."

Questions from the Minority:

1. Did the City Council of Pinedale spend millions of dollars last year on open space (when surrounded by 'public' and therefore open lands) rather than any on of the priorities listed in your attachment?

Yes. The town spent $1.1 million to preserve 18 acres of green space within the town limits. Saving this land from development was a priority for the people of Pinedale based on a survey requesting input from residents.

2. Did the industry help in providing information for development of the priority list? Didn't industry also commit to helping you get funding for some of this, but your list was too late for the WY Legislative Session?

Industry did commit to providing information at the request of Governor Freudenthal and Senator Enzi. This information was to be used for planning not for the development of a priority list.

3. How many times did the operators invite you to meet with them during the SEIS process to update you on issues?

During the SEIS process for the Pinedale Anticline the town met with industry regularly on average once a month. Subsequent to the Record of Decision, our meetings with industry are infrequent at best.

4. Do you communicate with the operators to help better plan your community?″

Refer to #3

5. Given your comments about lack of planning and socioeconomic concerns are you suggesting that the federal government and BLM should be in charge of planning your community? Do you really want the BLM to be in charge of local zoning and planning for Pinedale? If the BLM does this then why does Pinedale need a mayor, town council or planning and zoning office?

No, it was never our intention to suggest the federal government or the BLM be in charge of our community. The town requested and was granted participating

agency status during the SEIS and went to great lengths to express our concerns during this time.

6. In your small community, like most rural towns in America, are your main street businesses or buildings boarded up and vacant?

We work hard in accordance with our Master Plan to encourage development within our historic and downtown district, but nonetheless, some buildings in this area are currently vacant. We are working to diversify our economy and provide for sustainability.

7. Didn't you appear on a segment on national network news about the benefit of the industry to jobs? Are jobs the best way for the community to address revenue to local and state governments (sales tax) in WY? If not, what is?

Yes. At the time, Sublette County enjoyed the lowest rate of unemployment of any county in the United States. Since then development has slowed and jobs are more scarce. Jobs based on economic diversity and sustainability are indeed the best way to address revenue to local and state governments.

8. Are you saying that you and your constituents would prefer not to have development in the Pinedale gas fields? Is that the opinion of the State government and the majority of the citizens of Sublette County?

As stated in my testimony before the committee, I speak not for or against industry, but rather for responsible development and citizens' concerns over quality of life issues.

9. What is the time horizon for the gas fields to produce? Isn't this a pretty sustainable economy in our or any economic system?

Predictions for long-term production range from 30-50 years. Intensive development (when the vast majority of population increase and socio-economic impacts occur) is predicted for the next 12-15 years. This cycle of boom and bust is not a sustainable economy in the long-run.

10. Were the Cat Exclusions used for infill drilling decisions only after a comprehensive EIS was completed?

No. A number of wells were approved using CXs 1 and 2 prior to Pinedale Anticline ROD of September 2008

11. Aren't detailed air quality models used in development decisions and corresponding mitigation measures taken?

Air quality models have been used in both Jonah and Pinedale Anticline development decisions, but EIS analyses underestimated impacts on air quality in the area. Research and application of corresponding measures are underway, but effective mitigation has yet to be determined.

The CHAIRMAN. Thank you, Mayor.

Ms. Brian.

STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT

Ms. BRIAN. Thank you for inviting me to testify today.

Since 1995, POGO has issued five reports about the underpayment of royalties to the Federal government by major oil and gas companies. Most recently we issued a report tracing the troubled history of the Royalty In Kind Program and recommending the abolition of it. POGO applauds the Committee for your oversight of royalty collections and for writing the CLEAR Act of 2009. This legislation will benefit taxpayers by implementing several key reports that will help ensure taxpayers are receiving their fair share from their natural resources.

As this Committee is well aware, MMS's RIK program has been a failure on many fronts. The GAO has found nearly annually, most recently this week, that MMS could not accurately account for RIK's program cost and benefits. POGO strongly supports Interior

Secretary Salazar's announcement yesterday before this Committee to end the RIK program.

However, our concern is that the language in this bill is not adequately clear that the RIK program is to be eliminated. The language currently reads, "The Secretary shall not conduct a regular program to take oil and gas lease royalties in oil or gas." Given that the existing RIK program quietly grew out of an innocuous pilot program, I believe this language does not fully put a stake in the heart of RIK, and without such language it is likely to rise again from the ashes in future administrations.

As outlined in our most recent report, the royalty management system is just broken. There are three basic and significant structural weaknesses to the MMS's royalty management program. The first is organizational and conflict. The sole mission of a Federal royalty and management collection program should be determining and enforcing revenue obligations of private companies operating on public and Indian lands. Yet, currently auditors and other compliance and enforcement personnel report to officials within MMS whose responsibilities also include leasing and development, and who may be more inclined to make the royalty management program look successful rather than be successful.

The second structural flaw is mythological. MMS's preference has been to perform compliance reviews rather than audits. Compliance reviews are based entirely on self-reported data provided by industry, meaning no third party reporting is required.

Third, a recent GAO report revealed that the MMS computer system is incapable of identifying in a timely manner instances when industry failed to report revenue and royalty at all. The CLEAR Act addresses all of these weaknesses.

First, delegating the compliance and auditing functions to the IG strengthens the independence of those functions. However, POGO is not sure if the IG in the long run is ultimately the right place for these functions to reside given the IG's other statutory responsibilities and the need to maintain independence from the Federal agencies and programs that it oversees.

Second, the CLEAR Act strengthens royalty accountability by prohibiting compliance reviews from substituting for audits. The Committee is also taking important steps to restore leasing offices' accounting and auditing credibility.

Finally, POGO sees potential in the CLEAR Act's proposed pilot program for automated transmission of oil and gas volume and quality data. The Committee might also consider incorporating language from H.R. 1462 to provide for a National Academy of Sciences study to improve the accuracy of oil and gas lease data.

While POGO believes removing the core auditing functions from MMS will go a long way to improve the structural and ethical problems, past investigations reveal there are significant cultural problems at MMS that also need to be restored.

POGO is deeply troubled, for example, by the revolving door between the Department and industry as has been recently evidenced this morning by the news of an investigation of former Interior Secretary Norton's turn through the revolving door to the Shell company. Fortunately, there have already been several improvements to ethics policies in the Department of the Interior since our last

report, and POGO is happy to see that the CLEAR Act also requires the Secretary of the Interior to annually certify that all employees involved in royalty production oversight are in full compliance with all Federal employees' ethics laws and regulations.

Just as adequate auditing is essential to revealing problems, transparency is essential to getting those problems fixed, but copies of contracts and other vital information is not currently publicly available. POGO is concerned that there is not enough transparency about the influence of organizations outside of MMS that help the agency to shape policy. Given the history of the RIK program where industry had a disproportionate amount of influence, we are particularly concerned about the Regional Outer Continental Shelf Council created under CLEAR. We hope that the Committee will make sure that their operations are transparent to the public, and recommend that these councils not be exempt from the Federal Advisory Committee Act.

And last, as a member of the Publish What you Pay Coalition, we hope that the Committee will consider in the future increasing transparency of the U.S.'s royalty revenue collections in order to serve as a model to other countries. As Secretary Clinton recently stated, "Sustainable progress is not possible in countries where the profits from oil and minerals line the pockets of oligarches who are corporations a world away, but do little to promote long-term growth and prosperity." The solution starts with transparency.

Companies publishing what you pay and governments publishing what you earn is a necessary first step toward a more accountable system for the management of natural resource revenues. The U.S. can lead here by example.

Thank you again for your oversight of royalty collections and asking me to testify. I look forward to answering any questions you may have.

[The prepared statement of Ms. Brian follows:]

Statement of Danielle Brian, Executive Director, Project On Government Oversight (POGO)

Thank you for inviting me to testify today. I am the Executive Director of the Project On Government Oversight, also known as POGO. POGO was founded in 1981 by Pentagon whistleblowers who were concerned about wasteful spending and weapons that did not work. Throughout its twenty-eight-year history, POGO has worked to remedy waste, fraud, and abuse in government spending in order to achieve a more effective, accountable, open, and ethical federal government. Since 1995, POGO has issued five reports about the underpayment of royalties to the federal government by the major oil and gas companies. Most recently, we issued a report tracing the troubled history of the Department of the Interior's Royalty-In-Kind (RIK) program and recommending the abolition of the program.

POGO applauds the House Natural Resources Committee for your vigilant oversight of royalty collections, and for writing the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009. This legislation will benefit taxpayers by implementing several key reforms that will help to ensure taxpayers are receiving their fair share from their natural resources.

RIK Is a Failed Experiment

Oil and gas royalties collected from drilling on federal lands and waters is one of the largest sources of revenue for the federal government other than taxes. Royalties used to be collected primarily in cash, also known as royalty-in-value. This changed in 1997 when the Minerals Management Service (MMS) began a pilot pro-

gram called Royalty-In-Kind (RIK).[1] This program accepts royalty payments in the form of product rather than cash, and is one of the Department of Interior's primary methods of collecting those royalties. Industry influence on the RIK program is traceable from the program's conception, through its expansion, to the full-blown program that exists today.

As this Committee is well aware, MMS's RIK program has been a failure on many fronts. The Government Accountability Office (GAO) found in 2003,[2] 2004,[3] 2007,[4] 2008,[5] and 2009[6] that MMS could not accurately account for the RIK program's cost and benefits. In light of that, according to the GAO, RIK operated as an honor system. As the Inspector General discovered and reported to the full committee last fall, this honor system resulted in a culture of "ethical failure" and "substance abuse and promiscuity."[7]

The reform most fundamental to making this program functional would be a dramatic increase in auditing capacity, yet this fix would wholly undermine MMS's original justification for the program—that the RIK program would reduce the need for auditing and so would decrease oversight costs. This alone should be reason enough to cancel the failed program. However, the legitimacy of the program is also called into question given the Inspector General's findings that MMS employees consider themselves exempt from standard ethical provisions that protect the public's interest.[8] MMS's close relationship with industry has been instrumental in preventing the public from getting what is owed to them for industry's use of public resources. Extensive corruption and collusion in the RIK program, given that it is charged with managing billions of dollars of federal revenue, should be the final nail in the program's coffin.

POGO supports the CLEAR Act for seeking to eliminate RIK as a method for paying federal oil and gas royalties. However, we are concerned that the language is not strong enough. We recommend that the CLEAR Act be strengthened to cancel the RIK program, or to place the program on a moratorium until an independent audit shows that it is accurately collecting all of the royalties owed to taxpayers.

Taxpayers Deserve Assurances Royalties Are Collected Accurately

As outlined in our most recent report, *Drilling the Taxpayer: Department of Interior's Royalty-In-Kind Program,* MMS's problems go far deeper than the ethical failures of individuals. The biggest problem is that the royalty management system is broken.

There are three basic and significant structural weaknesses to the MMS's royalty management program. The first is an organizational conflict. The sole mission of a federal royalty management and collection program should be determining and enforcing revenue obligations of private companies operating on public and Indian lands. Yet, currently, auditors and other compliance and enforcement personnel re-

---

[1] Deal Consulting & Dispute Resolution, LLC, "Federal Oil & Gas Royalty Valuation, Royalty in Kind and Royalty Relief 1980-2008," August 2008. http://www.dtdeal.com/pdf/chronology-valuation_royalty_relief1980-2008.pdf (Downloaded September 15, 2009)

[2] General Accounting Office, Report to Congressional Requesters on Mineral Revenues: A More Systematic Evaluation of the Royalty-in-kind Pilots is Needed (GAO-03-296), January, 2003, Summary page. http://www.gao.gov/new.items/d03296.pdf (Downloaded September 15, 2009)

[3] General Accounting Office, Report to Congressional Requesters on Mineral Revenues: Cost and Revenue Information Needed to Compare Different Approaches for Collecting Federal and Gas Royalties (GAO-04-448), April 2004, Summary page. http://www.gao.gov/new.items/d04448.pdf (Downloaded September 15, 2009)

[4] Government Accountability Office, Testimony Before Committee on Natural Resources, U.S. House of Representatives on Royalties Collection: Ongoing Problems with Interior's Efforts to Ensure A Fair Return for Taxpayers Require Attention (GAO-07-682T), March 28, 2007, Summary page. http://www.gao.gov/new.items/d07682t.pdf (Downloaded September 15, 2009)

[5] Government Accountability Office, Testimony Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives on Mineral Revenues: Data Management Problems and Reliance on Self-Reported Data for Compliance Efforts Put MMS Royalty Collections at Risk (GAO-08-560T), March 11, 2008, p. 4. http://resourcescommittee.house.gov/images/Documents/20080311/testimony_rusco.pdf (Downloaded September 15, 2009)

[6] Government Accountability Office, Royalty-In-Kind Program: MMS Does Not Provide Reasonable Assurance It Receives Its Share of Gas, Resulting in Millions in Forgone Revenue (GAO-09-744), August 2009, http://www.gao.gov/new.items/d09744.pdf (Downloaded September 15, 2009)

[7] Department of Interior, Office of Inspector General, "Memorandum on OIG Investigations of MMS Employees," September 9, 2008, p. 2. http://www.doioig.gov/upload/Smith%20REDACTE%20FINAL_080708%20Final%20with%20transmittal%209_10%20date.pdf
(Downloaded September 15, 2009) (hereinafter "Memorandum on OIG Investigations of MMS Employees")

[8] "Memorandum on OIG Investigations of MMS Employees." pp. 1-2.

port to officials within MMS whose responsibilities also include leasing and development, and who may be more inclined to make the royalty management program look successful rather than be successful. As POGO discovered, in some instances MMS told their professional auditors to stop auditing, even when the auditors had discovered evidence that companies were underpaying royalties.

The second structural flaw is methodological. MMS's preference has been to perform compliance reviews rather than audits. compliance reviews are based entirely on the self-reported data provided by industry—meaning that no third-party reporting is required.

Third, a recent GAO report revealed that the MMS computer system is incapable of identifying in a timely manner instances when industry fails to report revenue and royalty at all.[9]

When it comes to royalty collection, both MMS and its technology are untrustworthy, and these weaknesses may have cost taxpayers hundreds of millions of dollars in much-needed revenue.

The CLEAR Act addresses these structural weaknesses.

First, delegating the compliance and auditing functions to the Inspector General strengthens the independence of those functions, which is essential for the royalty management system to be effective. However, POGO is not sure if the Office of the Inspector General (OIG) is ultimately the right place for these functions to reside, given the OIG's other statutory responsibilities and the need to maintain independence from the federal agencies and programs it oversees. We are also concerned that the CLEAR Act continues some aspects of the current conflict of mission problems between leasing and oversight functions. The Office of Federal Energy and Minerals Leasing that this bill would create will be responsible for both managing leases for development and conducting oversight and inspections of those leases—one of the problems that moving compliance and auditing duties to the OIG seeks to remedy. POGO believes that royalty management independence must include regulatory and enforcement independence, and the Committee should consider the importance of severing oversight functions from the Office of Federal Energy and Minerals Leasing.

Second, the CLEAR Act strengthens royalty accountability by prohibiting compliance reviews from constituting or substituting for audits. The Committee is also taking important steps to restore leasing offices' accounting and auditing credibility by requiring employees who conduct compliance reviews to "meet professional auditor qualifications that are consistent with the latest Government Auditing Standards." In addition, the CLEAR Act's requirement to refer for audit disparities revealed by any compliance reviews is also a step in the right direction.

Finally, POGO sees potential in the CLEAR Act's proposed pilot program for automated transmission of oil and gas volume and quality data to improve production verification systems and ensure accurate royalty collection and audits.

Ending Ethical Misconduct in Royalty Collections

While POGO believes that removing the core auditing functions from MMS—and thereby the conflict of mission within the agency—will go a long way to improve the structural and ethical problems, past investigations reveal that there are significant cultural problems at MMS that also need to be resolved. As the Inspector General discovered, MMS's inappropriate relationship with industry—which included "gifts and gratuities"—compromised their objectivity.[10] Additionally, POGO is concerned about industry's entrenched influence at MMS.

Our investigation revealed that MMS justified the expansion of the RIK program over the objections raised by state auditors, Members of Congress, and POGO[11] by

---

[9] Government Accountability Office, Mineral Revenues: Data Management Problems and Reliance on Self-Reported Data for Compliance Efforts Put MMS Royalty Collections at Risk (GAO-08-893R), September 12, 2008, p. 5. http://www.gao.gov/new.items/d08893r.pdf (Downloaded September 15, 2009)

[10] Department of Interior, Office of the Inspector General, Royalty Initiatives Group, Evaluation Report: Minerals Management Service Royalty-in-Kind Oil Sales Process (C-EV-MMS-0001-2008), May 2008, p. 4. http://www.doioig.gov/upload/2008-G-0021.pdf (Downloaded September 15, 2009)

[11] Innovation & Information Consultants, Inc. "Memorandum on MMS Report in RIK Pilot Program in Wyoming," April 24, 2001, p. 1. http://www.pogoarchives.org/m/ep/ep-rikmemo.pdf (Downloaded September 15, 2009); Representative Carolyn Maloney, "Maloney Cautions Against Republican Plans to Bolster Oil Industry," June 12, 2001. http://maloney.house.gov/index.php?option=com_content&task'view&id=688&Itemid=61 (Downloaded September 15, 2009); House Subcommittee on Energy and Mineral Resources, "Statement of Danielle Brian at Oversight Hearings on Royalty-In-Kind for Federal Oil and Gas Production,"

Continued

relying on a so-called "independent" study by Lukens Energy Group.[12] Not only was the Vice President of Lukens a vocal advocate for the RIK program,[13] the Inspector General determined that Lukens Vice President Hagemeyer was considered a "trusted advisor" by RIK Program Director Greg Smith, and that the two communicated extensively during the contract selection process despite regulations clearly prohibiting such contact between bidding companies and MMS officials. The IG reported that during the same time period Lukens' contract bid was being considered by MMS, Hagemeyer assisted then-RIK Deputy Program Manager Smith in his efforts to market Geomatrix, a firm with which Smith was improperly consulting on the side.[14] POGO remains concerned that Smith was never prosecuted. This sends the wrong message to employees in MMS—that blatant misconduct will go unpunished.

POGO is also deeply troubled by the revolving door between the Department of the Interior and industry. A number of the individuals who went through the revolving door have actually been sentenced to prison for violations of conflict-of-interest laws or obstruction of justice.[15] As long as the door continues to revolve between industry and Interior or MMS, the public cannot be sure that their interests are being served.

Fortunately, there have already been several improvements to ethics policies in the Department of the Interior since our report. POGO applauds President Obama's Executive Order for Ethics Commitments by Executive Branch Personnel,[16] and Interior Secretary Ken Salazar's Memorandum to Employees on their ethical responsibilities.[17] POGO particularly wants to praise Secretary Salazar for enhancing the ethical culture of the agency by urging employees to seek the assistance of bureau or office ethics officials for guidance to avoid even the appearance of impropriety.

While these are important steps, POGO is also happy to see that the CLEAR Act requires the Secretary of the Interior to annually certify that all employees involved in royalty production oversight are in full compliance with all federal employee ethics laws and regulations.

Increasing Transparency in Royalty Management and Collections

Just as adequate auditing is essential to revealing problems, transparency is essential to getting those problems fixed. But copies of RIK contracts and vital information about who operates the program are usually not publicly available to be scrutinized by watchdogs, other issue-area experts, the news media, or the public in general. Many of the problems that have occurred in the RIK program and within MMS could have been prevented or resolved sooner if the Interior Department's actions had been more transparent to Congress and other stakeholders.

Due to the opaqueness of the royalty management system, many of the insights into its problems have come from whistleblowers. As this Committee is well aware, many whistleblowers have tried to draw attention to management and underpayment problems as they saw them occurring, only to be discouraged or retaliated against. For example, the Audit Manager for the North Dakota State Auditor's Office told this Committee's Subcommittee on Energy and Mineral Resources that a high-ranking MMS official advised him and other members of the State and Tribal Royalty Committee not to testify before Congress: "This official expressed to us that Congress only requests that you testify so you aren't obligated to testify and that it is best to keep any problems in house."[18] This is clearly unacceptable and under-

---

July 31, 1997, pp. 101-102. http://commdocs.house.gov/committees/resources/hii45026.000/hii45026__0.htm (Downloaded September 15, 2009)

[12] Lukens Energy Group, Assessment of the Federal Royalty-in-Kind ("RIK") Program and Development of RIK Business Plan, September 30, 2003.

[13] American Petroleum Institute, "Hagemeyer gets API honor," API EnCompass: News, November 13, 2000. http://web.archive.org/web/20001213110900/www.api.org/release.cgi?days=90 (Downloaded September 15, 2009)

[14] Department of the Interior, Office of Inspector General, Investigative Report: Gregory W. Smith, August 7, 2008, p. 16-17. http://www.doioig.gov/upload/Smith%20REDACTED%20FINAL__080708%20Final%20with%20transmittal%209__10%20date.pdf (Downloaded September 15, 2009)

[15] For a list of these individuals, see our report: Project On Government Oversight, Drilling the Taxpayer: Department of Interior's Royalty-In-Kind Program, September 18, 2008, pp. 13-14 http://pogoarchives.org/m/nr/rik/report-20080918.pdf (Downloaded September 15, 2009)

[16] White House, "Executive Order—Ethics Commitments by Executive Branch Personnel," January 21, 2009. http://www.whitehouse.gov/the__press__office/ExecutiveOrder-EthicsCommitments/ (Downloaded September 15, 2009)

[17] Department of the Interior, "Secretary Salazar Outlines High Ethical Standards for Interior Department in Memo to All Employees," January 26, 2009, http://www.doi.gov/news/09__News__Releases/012609a.html (Downloaded September 15, 2009)

[18] Dennis Roller, "Written Testimony of Dennis Roller, Audit Manager for the North Dakota State Auditor's Office—Royalty Audit Section For the Minerals Management Service Before the

mines the public interest. We hope that the members of this Committee will keep in mind how essential it is for there to be real protections for whistleblowers.

POGO is also concerned that there is not enough transparency about the influence of organizations outside of MMS that help the agency to shape policy. In our investigation of the development of the RIK program, we learned that industry had a disproportionate amount of influence over the program's development. Because of this, we are particularly concerned about the Regional Outer Continental Shelf Councils created under the CLEAR Act. We hope that this Committee will continue to be vigilant in its oversight to make sure that the public interest is sufficiently represented on the Councils, which will develop future natural resources policies. Additionally, we urge the Committee to remove the current language in the bill that would exempt these Councils from the Federal Advisory Committee Act. The Federal Advisory Committee Act's requirements to make membership, administrative procedures, and hearings public knowledge provide precisely the kind of openness and accountability that our natural resource management system so desperately needs.

POGO also supports provisions in the CLEAR Act that will ensure federal agencies have access to proprietary information for wind and solar projects to assure compliance, but we hope that the Committee will extend this provision to include uranium leases.

And lastly, as a member of the Publish What You Pay Coalition, we hope that the Committee will consider in the future increasing transparency of the U.S.'s royalty revenue collections in order to serve as a model to other countries. As Secretary of State Hillary Clinton recently stated, "Sustainable progress is not possible in countries that fail to be good stewards of their natural resources, where the profits from oil and minerals line the pockets of oligarchs who are corporations a world away, but do little to promote long-term growth and prosperity. The solution starts with transparency."[19] Companies "publishing what you pay" and governments "publishing what you earn" is a necessary first step towards a more accountable system for the management of natural resource revenues.

Thank you again for your oversight of royalty collections and for asking me to testify. I look forward to answering any questions you may have, and to working with your Committee on this issue.

Response to questions submitted for the record by Danielle Brian, Executive Director, Project On Government Oversight

Questions from the Majority:

1. **Ms. Brian, there are a number of provisions in Title II of the CLEAR Act that are designed to improve accuracy and accountability in the federal royalty collection system, such as increasing fines for violators and eliminating interest on overpayments made by royalty payors. Please provide the Committee your analysis and conclusions on these provisions.**

Billions of dollars in false claims act suits demonstrate that gross underpayments of royalties occur and that MMS is not sufficiently deterring companies from defrauding taxpayers. Increasing penalties to deter cheating taxpayers will help ensure that taxpayers get paid what is owed to them.

There are several important provisions in the CLEAR Act that improve the accuracy of the federal royalty collection system by improving auditing of royalty payments. MMS's preference has been to perform compliance reviews rather than audits. Compliance reviews constitute superficial oversight, since these reviews are based entirely on the self-reported royalty data provided by industry and do not require third-party reporting. POGO supports the language in the CLEAR Act that ends this practice by prohibiting compliance reviews being used as a substitute for audits.

POGO also supports the intent of the CLEAR Act to restore independence to the auditing function of the government for royalty payments by removing this function from MMS and giving it to the Office of the Inspector General (OIG). It is essential for the auditing function to be independent if it is going to be effective. However,

---

Natural Resources Subcommittee on Energy and Mineral Resources United States House of Representatives," March 11, 2008, p. 2. http://resourcescommittee.house.gov/images/Documents/20080311/testimony_roller.pdf (Downloaded September 15, 2009)

[19] Secretary of State, Hillary Rodham Clinton, "Remarks at the 8th Forum of the African Growth and Opportunity Act," August 5, 2009. http://www.state.gov/secretary/rm/2009a/08/126902.htm (Downloaded September 15, 2009)

POGO is not sure that the OIG is ultimately the right place for these functions, given the OIG's other statutory responsibilities and the need to maintain independence from the federal agencies and programs it oversees. POGO would also support amendments to the CLEAR Act or other legislation that would create an independent auditing agency to audit royalty payments.

The provision in the CLEAR Act to end the RIK program is also a positive step to restore accuracy and accountability to royalty management, but this language should be strengthened to replicate the actions of Secretary Salazar and actually terminate the program.

Questions from the Minority:

1. Do you believe there should be a planning council for each of the Minerals Management Service's OCS planning areas?

POGO does not have a position about the number of planning councils for OCS planning. But the effectiveness of planning councils will only be as good as their composition. This is why POGO believes that it is important that all planning councils be subject to the Federal Advisory Committee Act, which would ensure public and private interests are appropriately taken into consideration, and that the actions of each planning council is open to the public.

2. Can you elaborate on why it is important for the Planning Councils to be subject to the Administrative Procedures Act?

In my testimony, I expressed specific concerns about how the Regional Outer Continental Shelf Councils created under the CLEAR Act not being subject to the Federal Advisory Committee Act. The Federal Advisory Committee Act (FACA) includes several important provisions that make the actions of these Councils, and their influence on resource development, transparent to the public. These provisions enhance the transparency of the Councils' actions, making them more objective, accountable to the public, and more likely that these Councils will act in the public interest. The FACA requirements to make membership, administrative procedures, and hearings public knowledge provide precisely the kind of openness and accountability that our natural resource management system currently lacks and so desperately needs.

The Administrative Procedures Act also provides several important safeguards for the public interest by making sure that information, rules, and operational procedures for these Councils are made available to the public. This includes making sure that final opinions—including concurring and dissenting opinions—records, and administrative instructions are also publicly available. It is important that the public understands how the Councils reach their conclusions, and the Administrative Procedures Act helps to ensure they will.

The CHAIRMAN. Thank you. Mr. Mann.

STATEMENT OF CHRISTOPHER MANN, SENIOR OFFICER, PEW ENVIRONMENT GROUP, THE PEW CHARITABLE TRUSTS

Mr. MANN. Thank you, Mr. Chairman, Ranking Member Hastings, and Members of the Committee. My name is Christopher Mann, and I serve as the Senior Officer for Pew Environment Group.

Pew Environment Group is the conservation arm for the Pew Charitable Trusts. It is dedicated to advancing strong environmental policies guided by sound science on climate change, wilderness protection and marine conservation.

I appreciate the opportunity to share our views on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009.

The Pew Environment Group supports the CLEAR Act. This legislation will assist the much needed transition to sustainable energy production, improve accountability for energy development on public lands and public waters, and protect the environment and coastal economies through comprehensive planning for offshore energy development.

My testimony today will focus primarily on the provisions of the bill that relate to energy development on the OCS. Because the United States will continue to depend on fossil fuels for sometime to come, even as we begin the transition to renewable energy, we are not opposed to offshore drilling in general. However, if offshore development is expanded it must be grounded in science and give priority to maintaining the health of the marine ecosystems.

Both the Pew Oceans Commission and the congressionally charted U.S. Commission on Ocean Policy recommended that single sector resource management give way to an integrated and comprehensive approach implemented at the regional level. With no over-arching framework for their management and no single entity responsible for their well being, the oceans are bearing accumulative effect of the growing list of ad hoc resource use decisions.

Since the Ocean Commission's released their findings, progress has been mixed. A number of states are pursuing comprehensive ocean management in their waters, yet these efforts extend only three miles from shore, and there is no comparable Federal program farther offshore. With the leadership of this Committee, Congress has put fisheries management on a more sustainable course, but sound fisheries management cannot by itself safeguard the health of the marine ecosystems.

Even as the environmental damage caused our dependence on fossil fuels becomes apparent, there is renewed interest in exploiting offshore oil and gas resources. President Obama took an important step when he established an interagency task force in June to recommend a national ocean policy. The broad outlines of that plan have already been transmitted to the President, and we expect that it will be made public as early as today.

The CLEAR Act contains a number of reforms to guide rational development of offshore energy while providing greater protection for marine living resources and ecological services. We believe these reforms are complementary, not contradictory, to the administration's efforts.

The OCS Council established by the bill are not the fully integrated governance system recommended by the Ocean Commissions, but creating an offshore energy decisionmaking process that requires fuller consideration of other uses and users of ocean resources is a substantial improvement over current practice. We strongly support establishing a permanently appropriated dedicated fund for ocean and coastal management capitalized by OCS revenue. There is a compelling logic in taking public revenue from the extraction of non-renewable marine resources and investing it in ocean and coastal conservation. This Committee lent bipartisan support to similar legislation and shepherded it through the House a number of years ago.

We also support Section 704 of the bill which prohibits the Department of Commerce and regional fishery management councils from permitting and managing offshore aquaculture under the Magnuson-Stevens Act.

While we share NOAA's goal of a national aquaculture policy, we believe that offshore aquaculture should be managed under a national regulatory program designed for aquaculture, not for capture fisheries.

Moving for a moment to the land, we strongly support removing uranium from the purview of the 1872 mining law. The sensible change will allow extraction of uranium from public lands where such development is in the public interest and with the appropriate safeguards. Today, uranium remains the only energy mineral still subject to the antiquated law that limits the ability of Federal managers to determine how and where extraction takes place.

We do have a number of recommendations for improvement of the bill which are detailed in my written statement: First, make NOAA a full partner in regional council management and in preparing ocean assessment; second, ensure that the Secretary must promptly approve regional plans and impose regional restrictions on offshore development until a regional plan is approved; third, do not provide voting membership on OCS councils to non-Federal stakeholders who may have an economic interest in the outcome; last, because of its unique fragility and vulnerability, prohibit development of offshore energy in the Arctic until a comprehensive plan is approved for that region.

Mr. Chairman, we look forward to working with both Congress and the administration to protect, maintain, and restore the health of our oceans through comprehensive ecosystem-based management. The CLEAR Act provides for rational and sustainable development of the energy resources of our public lands an oceans that is an important step forward.

I thank you for the opportunity to testify, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Mann follows:]

Statement of Christopher G. Mann, Senior Officer, Pew Environment Group

Chairman Rahall, Ranking Member Hastings and Members of the Committee:

My name is Christopher Mann and I serve as a Senior Officer with the Pew Environment Group in Washington, D.C. I greatly appreciate your invitation to appear before the Committee to share our views on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009. The Pew Environment Group is the conservation arm of the Pew Charitable Trusts. We are dedicated to advancing strong environmental policies that are informed and guided by sound science on climate change, wilderness protection and marine conservation. I manage a number of Pew's marine conservation initiatives, including our efforts to promote comprehensive, ecosystem-based management of our oceans, coasts, and Great Lakes.

I am pleased to offer the support of the Pew Environment Group for H.R. 3534. We believe that, this legislation is a strong step in the right direction to assist the much-needed transition to sustainable energy production, to improve accountability for energy development on public lands and in public waters, and to protect the environment and coastal economies through comprehensive planning for offshore energy development. My testimony today will focus primarily on the provisions of the bill that relate to energy development on the Outer Continental Shelf (OCS).

Offshore energy development and a new approach to national energy policy

The Pew Environment Group understands that the United States will continue to depend on fossil fuels for some time to come, even as we begin the necessary transition to non-polluting, renewable energy. As a result, we are not opposed to offshore drilling in general, but feel that if offshore oil and gas development is expanded, it must be done in a way that protects the oceans and coasts. Decisions should be grounded in science and give priority to maintaining the health of the ecosystem. Further, any expansion in offshore energy development should be used to build a sustainable energy future, not to continue the dependence on fossil fuels that has created the looming crisis of global warming. Congress and the Administration should adopt measures above and beyond the current OCS leasing and development process to ensure that our coastal economies, and the marine resources that sustain

them, are not harmed by expanded offshore development. That is why we endorse the approach taken in H.R. 3534.

The case for ocean governance reform

Six years ago, the Pew Oceans Commission released its final report. A year later, the U.S. Commission on Ocean Policy issued its report. The two commissions came to remarkably similar conclusions: Our use and misuse of marine resources—from overfishing, water pollution, habitat destruction, and other activities—has led to widespread marine environmental degradation. The damage from human activities to marine ecosystems was documented exhaustively in the reports of the ocean commissions. The case has since been bolstered by dozens of additional scientific studies.

There is no better example of the Tragedy of the Commons than our oceans. For millennia, humankind viewed the oceans as vast and their resources inexhaustible. Particularly after World War II, however, technology allowed us to strip living resources from the oceans far faster than the oceans could replace them. Technology now allows us to remove minerals and carry out offshore activities, such as renewable energy production and aquaculture, in places never before accessible. With no overarching framework for their management and no single entity responsible for their wellbeing, the oceans are bearing the cumulative effect of a growing list of ad hoc resource use decisions.

Single-sector management approaches are simply not up to the task of addressing the complex interactions and effects of multiple stressors on the oceans. After all, you can drill for oil, float wind turbines, or ship cargo, over a warm, dead ocean, but you can't fish in it and you wouldn't want to swim in it. To address these shortcomings, the ocean commissions recommended that narrow, single-sector resource management give way to a more integrated and comprehensive approach implemented at the regional level and supported at the national level. This would be a transformative and much-needed change in both the way society views the oceans and in the way we manage our use of the oceans.

Since the ocean commissions released their findings, progress has been mixed. A number of states have adopted a more comprehensive approach to ocean planning and management in their own waters, and are working with adjacent states on regional efforts. Yet these state-based efforts to improve ocean management are limited to the narrow band of coastal waters over which they have jurisdiction and are frustrated by the lack of coordination among federal activities.

With bipartisan leadership from this Committee, Congress has enacted important reforms putting fisheries management on a more sustainable course. But marine ecosystems are about much more than fish. Although science-based fisheries management is a critical element of sound ocean management, fisheries management cannot by itself safeguard the health of marine ecosystems. And it is the overall health of marine ecosystems on which fisheries ultimately depend.

As we struggle to transform our energy economy, there is renewed interest in offshore oil and gas extraction, as well as emerging opportunities for ocean renewable energy development. At the same time, the environmental damage that our dependence on fossil fuels is causing to marine and terrestrial ecosystems alike has become more apparent. Global warming-induced changes in currents and upwelling patterns, rising sea level and water temperature, melting sea ice, and the increasing acidity of ocean waters will cause considerable damage to marine ecosystems. These new challenges are perhaps nowhere more evident than in the Arctic, where a poorly understood system already under stress from rapid environmental change is at the same time being exposed by reduction in ice cover to increased resource extraction and maritime traffic.

As you are aware, President Obama took an important step to address ocean management needs when he established an interagency ocean policy task force in June to recommend a national ocean policy and an implementation framework for that policy. The broad outlines of that plan have already been transmitted to the President and we expect that it will be made public as early as today.

Comprehensive offshore energy planning and management: a constructive step

Mr. Chairman, H.R. 3534 contains a number of significant reforms to guide rational development of offshore energy while providing greater protection for the living resources and ecological services provided by the oceans. We believe these reforms are complementary to the ocean governance reforms being undertaken by the Administration, and we of course urge you to work closely with the Administration to ensure that continues to be the case as the President's efforts come into sharper focus and as this legislation advances in Congress.

First, title VI requires that the Secretary of the Interior and the Secretary of Commerce jointly establish outer continental shelf councils to provide for long-term, multiple-objective planning and management of energy development in the OCS on a regional basis. The councils would be chaired either by Interior or Commerce. The councils would be broadly representative of the key resource-use decision makers at the federal, state and tribal levels. They would take full advantage of existing regional expertise in marine fisheries management and interstate ocean management. Detailed regional assessments of the renewable and non-renewable energy potential, resource uses and users, and ecological condition of an OCS region would be prepared by the Department of the Interior, in consultation with the Department of Commerce.

Based on these assessments, each regional council would prepare, and submit to the Secretary of the Interior for approval, a multi-objective, science- and ecosystem-based plan for OCS energy development in that region. The plans developed by regional councils would explicitly consider the many other economic and recreational uses of the marine resources of each region, and would be designed to "ensure the protection and maintenance of ecosystem health in decisions affecting the siting of energy facilities." After considering these factors, the plans would delineate areas open to energy development in each region, and once finalized, the plans would be binding on the Secretary of the Interior in leasing and permitting under the OCS Lands Act (OCSLA).

This is not the fully integrated governance system recommended by the ocean commissions, but we recognize that this is an energy bill. Creating an offshore energy decision-making process that requires fuller consideration of other uses—and users—of ocean resources is a substantial improvement over current practice. Careful assessment of the economic and ecological conditions of each region, followed by full consideration of the impact of energy development decisions on resources, resource users, and ecological values will result in energy siting decisions that protect the long-term public interest in healthy and productive marine ecosystems. To further these ends, we suggest a number of improvements to the bill.

Suggested improvements to the bill

We strongly support the inclusion of the Department of Commerce, presumably acting through the National Oceanic and Atmospheric Administration, in establishing and running regional councils, and in preparing regional energy, economic and ecological assessments. To better fulfill the purposes of title VI, however, we believe the bill should go further and require that regional councils are jointly chaired by Interior and Commerce, and that regional assessments are jointly prepared by the two departments. These departments bring considerable, but different, expertise to bear on the problem of offshore energy siting and management. To ensure the fullest consideration of the range of ocean resources and users affected by offshore energy development decisions, we believe that NOAA should be a full partner in the assessment and regional planning process, even though Interior will make final decisions regarding regional plan approval and implementation under the OCSLA.

As introduced, the bill would allow leasing and permitting under the OCSLA to continue as usual until regional plans are approved. The timeline in the bill allows up to four years for regional plans to be approved and the consequences for failure to approve a plan are vague. We recognize the complexity of the task assigned to the councils, but four years is too long to continue with business as usual under the OCSLA. We recommend that you firm up the requirement for the Secretary of the Interior to ultimately approve regional plans. We also request that you include provisions from an earlier draft of the bill that created new environmental requirements in the OCSLA that would apply in addition to requirements of a regional plan.

Section 602 of the bill provides broad authority to appoint non-government officials to the council to achieve balance on the council. Although we support balanced representation of interests and perspectives on these councils, that can be done from within the ranks of government agencies with expertise and jurisdiction over marine resources. We do not feel it is appropriate to delegate decision-making authority over public resources to non-government stakeholders. Indian tribes and interstate efforts to improve ocean management should be represented on the regional councils, but there is a need to clarify how such representation will be selected and appointed. As a practical matter, one council for the entire Atlantic EEZ will be too large and ungainly. This represents too many states and marine ecosystems to provide effective advice to the Secretary.

Because of the pace and magnitude of climate change in the Arctic, the challenges to safe energy exploration and development in that hostile environment, and the

poor state of scientific understanding of those ecosystems, the Pew Environment Group recommends that energy development in the Arctic be deferred until a comprehensive plan can developed for that region.

Reinvesting OCS revenue to conserve and manage our oceans and coasts

We strongly support section 605, which establishes a permanently appropriated, dedicated fund for ocean and coastal management. This is consistent with the recommendations of both ocean commissions. The bill would cover ten percent of OCS revenue into the fund each year. This would provide approximately one billion dollars annually for ocean and coastal management. The proposed trust fund would be used to support three classes of activities for protection, maintenance and restoration of marine ecosystem health: grants to states based on a formula similar to that used to allocate funds under the Coastal Zone Management Act; competitive grants for ocean conservation and management available to public and private entities; and grants to support regional ocean partnerships.

Offshore energy extraction has significant offshore and onshore impacts. This fund can help address those effects as well as the myriad other challenges facing our oceans and coasts. There is a compelling logic in taking public revenue derived primarily from the extraction of non-renewable ocean resources and investing them in the conservation and management of renewable resources. Such a financing scheme will pay rich dividends long after the oil and gas coming from our oceans has been used. That was certainly the thinking of this Committee a number of years ago when it crafted bipartisan legislation establishing a similar fund and shepherded it through House passage.

Of course we are in a much different fiscal climate than the late 1990s, but given the state of our oceans and coasts, an investment of this magnitude is appropriate and much needed. Moreover, an investment of this magnitude is in fact modest given the millions of jobs and hundreds of billions in annual economic activity derived from our oceans and coasts. Given the hundreds of billions that are being spent to prop up our financial infrastructure, I respectfully suggest that an investment of a tiny fraction of that amount in support of our blue infrastructure is highly prudent.

Mining Law reform

My portfolio is marine conservation, but the Pew Environment Group continues to support reform of the nation's antiquated mining law. As a result, we strongly support the provision in this bill that removes uranium from the purview of the 1872 Mining Law. We believe this is a sensible policy change that will allow development of uranium resources from public lands where such development is in the public interest and with the appropriate safeguards. Long ago, the government recognized the critical value of oil and gas resources and removed them from the antiquated law that gives away mineral resources on public lands. At the time that oil and gas reserves were withdrawn from the mining law, the primary concern was the potential loss of strategic resources. Thanks to those concerns, oil and gas resources on public lands have been managed for decades under the Mineral Leasing Act, bringing significant returns to the U.S. taxpayers.

Today, uranium remains the only energy mineral still subject to the antiquated law that limits the ability of federal land managers to determine how and where extraction takes place. Under that law, uranium mining may occur in sensitive areas, including lands adjacent to the Grand Canyon National Park that hold important waters feeding springs and seeps in the Park's rich ecosystem. And once claims are staked and valid discoveries made, mining may go forward, even in areas that have important public uses such as watershed protection, wildlife habitat or recreation that may be seriously impaired. In contrast, management of public uranium resources under a leasing program will allow not only for a royalty return to the taxpayers but also careful, proactive balancing of other public needs.

Offshore aquaculture

Last but not least, we support section 704, which prohibits the Department of Commerce and Regional Fishery Management Councils from permitting and managing offshore aquaculture under the Magnuson Stevens Act. The Pew Environment Group believes that attempting to regulate aquaculture under the Magnuson Stevens Act is a gross misinterpretation of the plain meaning of that law and congressional intent in enacting it. Offshore aquaculture should be guided by a national regulatory program designed specifically for aquaculture, not created ad hoc from a law designed to regulate capture fisheries.

Conclusion

Mr. Chairman, we look forward to working with both Congress and the Administration to protect, maintain and restore the health of our oceans through comprehensive, ecosystem-based management. H.R. 3534 provides for rational and sustainable development of the energy resources of our public lands and oceans, while ensuring that a significant portion of the revenue derived from extraction of nonrenewable resources is reinvested in the conservation and management of renewable resources. That is an important step toward a sound and sustainable national energy policy. I thank you again for the opportunity to provide the views of the Pew Environment Group and I would be happy to answer any questions you may have.

Response to questions submitted for the record by Christopher Mann, Senior Officer, Pew Environment Group

Questions from the Majority:

1. **Mr. Mann, in her testimony, NOAA Administrator Lubchenco indicated concerns about provisions of title VI because, in her view, they were not comprehensive enough. The Pew Environment Group is on the record in support of comprehensive ocean planning and management, yet you support the provisions of title VI. Why do you feel this legislation is a step in the right direction when it comes to comprehensive ocean planning?**

There are two main dimensions along which progress towards comprehensive ocean governance can move at the federal level: administrative action and legislation. President Obama has taken a significant step to advance the efforts of the federal government to improve ocean and Great Lakes management by directing the federal agencies involved in ocean management to recommend to him a national ocean policy, an implementation strategy for the policy, and a structural framework for marine spatial planning and management to carry it out. Acting under executive authority, the federal agencies are of course limited to activities and actions that are already authorized by law. The Pew Environment Group believes that the many federal laws affecting ocean and Great Lakes resources provide considerable discretion that could be used to significantly improve the management of these resources, and as a result, the health of ocean and Great Lakes ecosystems.

However, we also believe that to fully realize the goal of well-coordinated federal, state and tribal management of ocean and Great Lakes resources, additional statutory authority will eventually be required. We are greatly encouraged by the national ocean policy proposed by the interagency ocean policy task force, but to realize the benefits of such a policy over the long term, it should be enacted into law. In addition, the federal agencies are likely to encounter gaps or obstacles under their current authority to the full implementation of that policy. As a significant and growing use of ocean space and resources, offshore energy development is an aspect of ocean management that clearly requires a policy makeover.

Ideally, ocean resource use decisions would be made in an integrated framework that considers all the current and reasonably anticipated uses, and their environmental impacts, and makes decisions on siting and development to minimize harm to ecosystem health. However, given the complexity of federal law guiding ocean activities, such a system will not be quickly or easily achieved. As discussed above, significant improvements can be made through a government-wide mandate to cooperate towards a set of shared goals. But this kind of cooperation would have more lasting value if enacted into law.

The process for offshore energy siting is in need of an overhaul to make it more sustainable and responsive to regional priorities and needs. The OCS provisions of the CLEAR Act offer a reasonable approach to achieving these goals. We have offered several suggestions for improving these provisions and the ocean policy task force may have additional suggestions as well. With enactment of comprehensive national ocean policy likely to be a long way off, it seems prudent to set the process for offshore energy siting—clearly a major component of comprehensive ocean management—on the right footing. In striving for comprehensive ocean planning and management, Congress and the Administration should not let the perfect be the enemy of the good.

2. Mr. Mann, you have indicated strong support for the establishment of an Ocean Resources Conservation and Assistance Fund (ORCA). Why do you believe that this source of funding is needed in addition to the Land and Water Conservation Fund?

The Land and Water Conservation Fund has made an invaluable contribution to the protection of wildlife habitat and terrestrial ecosystems in the United States. By protecting riparian and coastal habitat, the Fund has also helped to protect and restore the health of aquatic ecosystems. But because the LWCF is focused on land acquisition, it is unable to address active conservation and management needs in the water. The public does not have to acquire submerged lands and waters of the oceans and Great Lakes in order to protect them: We already own it. But aquatic conservation and management programs are chronically underfunded and these needs are significant and growing. As a result, a source of funding dedicated to ocean, coastal and Great Lakes conservation and management is needed.

The ORCA fund proposed by the CLEAR Act fulfills that need. It wisely creates two funding streams—one to support regional efforts to coordinate and improve ocean and Great Lakes management across government jurisdictional lines. The second is a program of competitive grants open to all qualified applicants to protect, maintain and restore the health of ocean, coastal and Great Lakes resources. This structure ensures that much-needed intergovernmental efforts receive appropriate support while also ensuring that the best conservation and management ideas receive support, regardless of their origin.

There is an inherent logic, as well as a sense of fairness, in taking a portion of the revenue derived from development of ocean resources—revenue that mostly derives from non-renewable resources—and reinvesting it in the conservation and management of renewable resources. This is a prudent public investment that will strengthen our coastal environment and economy long after the nonrenewable resources are gone.

3. Mr. Mann, the uses of the ORCA fund authorized in the bill include support for Regional Ocean Partnerships like the ones that have been established in New England—the Northeast Regional Ocean Council. Can you elaborate on the importance of these regional ocean partnerships and the importance of individual state efforts like the one that Massachusetts is undertaking and talk about the need to further their efforts even while the larger federal Ocean Policy Task Force is underway?

Both the U.S. Commission on Ocean Policy and the Pew Oceans Commission recommended regional approaches to more effectively manage coastal and ocean resources across jurisdictional boundaries. Such mechanisms would enable governments at all levels to work together to develop regional goals and priorities, and improve responses to regional needs. The Northeast Regional Ocean Council is one of six regional partnerships that have emerged to address these needs. Other interstate efforts include the West Coast Governors' Agreement on Ocean Health, Gulf of Mexico Alliance, Governors' South Atlantic Alliance, Mid-Atlantic Regional Council on the Ocean and the Great Lakes Regional Collaboration.

Although these partnerships differ in structure, process and degree of development, they all focus on large-scale issues that require multi-state responses for success. Each partnership has established a platform for collaboration amongst the states, federal agencies, and non-governmental entities on the most pressing issues of importance to the region. They have benefited from participation by the federal agencies, with federal participation changing somewhat from region to region depending on the priority issues being addressed.

The efforts of Massachusetts to improve ocean planning and management in state waters are an important step towards comprehensive, ecosystem-based coastal and ocean management. Competition for ocean space and resources is increasing and approaches need to be developed to assess needs and plan for sustainable use. The effects energy facilities, submarine cables, shipping routes, fishing, and recreation need to be managed in order to maximize the wide variety of benefits provided by our oceans. Coastal states are increasingly using marine spatial planning (MSP) as an effective tool, not only in Massachusetts but also in Rhode Island, Oregon and California. These states are in various stages of planning and early implementation, looking to develop increased capacity and collaborate regionally. Future efforts at ocean planning and management can learn from and build upon the work in Massachusetts and other states, taking advantage of the expertise and momentum developed to ensure more efficient use of resources by eliminating redundancies, focusing on management priorities, and building a common baseline and methodology for assessing and managing resources across jurisdictions.

The federal government could provide leadership in three key areas to assist the states in these efforts. First, the establishment of the national ocean policy recommended by the interagency ocean policy task force would provide a clear mandate for federal leadership to protect oceans and Great Lakes. Second, the implementation plan for the policy and/or energy siting provisions of the CLEAR Act would provide an appropriate framework for working with the states to improve regional ocean governance. Third, funding to regional partnerships, in combination with specific project funding, through the ORCA fund would provide the necessary financing for all levels of government to collaborate to improve ocean and Great Lakes ecosystem health.

Questions from the Minority:

1. Mr. Mann, do you believe that technology developed by American engineers has made oil production cleaner and more environmentally responsible over the last 4 decades?

The Pew Environment Group has not formally evaluated progress in the average environmental performance of oil production technology. Even if there have been substantial improvements, routine discharges from production facilities and pipelines occur and are significant because petroleum is highly toxic to marine life even at low exposures. In addition, despite new techniques and technologies, catastrophic events in both the production and transportation of petroleum can and do happen, with disastrous effects on marine life. While this does not mean we should stop producing oil and gas from public lands and waters, it does require extreme caution, especially when such development may affect sensitive or unique habitats, and threatened or endangered species.

2. Do you believe that this environmentally responsible technology which we have developed through responsible drilling has been exported to other countries like Norway and Brazil in the development of their resources?

I cannot validate your assertion that this technology is environmentally responsible. I am not an expert on the technology and I do not know whether, when and how it has been exported.

3. Mr. Mann, in your testimony you stated that you would oppose all development in the Arctic until sometime in the future is that correct?

The Pew Environment Group does not oppose all oil and gas leasing in the Outer Continental Shelf but what is being proposed in the Chukchi, Beaufort and Bering Seas is unprecedented in both scale and pace, in an ecosystem that is restructuring itself faster than anywhere else on the planet due to climate change. As part of implementing a national ocean policy, we believe the Department of Interior should defer industrial activities in U.S. Arctic waters pending development and implementation of a comprehensive, precautionary research and monitoring plan that is based on a scientific assessment of the health, biodiversity, and functioning of Arctic ecosystems. This process must consider avoidance of important subsistence and ecological areas, spill response capability and best available technology.

To ensure the protection and maintenance of Arctic marine ecosystems, government agencies should allow science and precaution to guide decisions about whether industrial activities occur in the Arctic Ocean and, if so, when, where, and how. This will help ensure that permitted industrial activities will be conducted sustainably, without harming Arctic ecosystems or the cultures dependent on them.

4. Do you believe that other nations with claims to the Arctic will delay their development of these resources?

The Pew Environment Group is not in a position to make assumptions about other nations' oil and gas development plans.

5. Do you believe there is any benefit for America to move forward with Arctic leasing in order to develop the environmental and technical knowledge to export to other nations, like Russia who is moving quickly to develop their Arctic OCS?

Despite leasing millions of acres in the Arctic in recent years, the United States continues to face challenges with responsible oil and gas development in that region. Spills occur frequently, and failures to detect and respond to spills have resulted in criminal charges. Each year according to the Alaska Department of Environmental Conservation, an average of 450 oil and other toxic spills occur on Alaska's North Slope as a result of oil and gas activity. In addition, no technology currently exists for cleaning oil in the presence of broken ice. Traditional oil spill response

methods are ineffective in dynamic sea ice conditions and the kinds of weather conditions that are common in Arctic waters.

In one area the United States has set an example for other Arctic nations on how to sustainably manage industrial activities in the Arctic Ocean. The North Pacific Fishery Management Council adopted a fishery management plan that prohibits commercial fishing unless and until new information demonstrates that commercial fishing can be conducted sustainably, without harming the ecosystems or peoples of the Chukchi and Beaufort seas. The Council acknowledged that current scientific information was insufficient to predict accurately the impacts of commercial fishing on ecosystems and subsistence activities in the Arctic, and decided to take a proactive, precautionary approach. This is the type of leadership the United States should continue to show the world.

6. Do you believe that windmills and oil and gas development are incompatible with each other or can Americans have all of the above energy production?

The Pew Environment Group does not believe that production of energy from renewable sources, including wind and hydrokinetic energy, is incompatible with oil and gas development on public lands and in public waters. However, the production of all these forms of energy requires a certain footprint. These questions should be explored by experts in these fields in collaboration with the agencies that permit such activities. That is why we advocate a comprehensive marine planning and management process that can weigh the requirements and impacts of such industries against the requirements of other offshore resources and resource users, and recommend development options that meet the nation's energy needs while ensuring that environmental health is protected.

7. Do you support enforcement of the Migratory Bird Treaty Act?

Yes.

8. A recent article in the Wall Street Journal highlighted that Oregon-based electric utility PacifiCorp paid $1.4 million in fines and restitution for killing 232 eagles in Wyoming over the past two years. ExxonMobil just settled a suit for $600,000 regarding bird kills related to contact with crude oil or other pollutants in uncovered tanks or waste-water facilities on its properties. Do you believe those penalties are appropriate?

We assume that these penalties were lawfully assessed under applicable law. If that is the case, then they are appropriate by definition. The Pew Environment Group does not support waiving applicable law to expedite energy development.

9. Michael Fry of the American Bird Conservancy estimates that U.S. wind turbines kill between 75,000 and 275,000 birds per year. Yet the Justice Department is does not bring cases against wind companies. Do you believe that wind companies should be compliant with the Migratory Bird Treaty Act as to how it relates to bird and bat kills?

The Pew Environment Group has no expertise on enforcement of the Migratory Bird Treaty Act and is therefore not in a position to comment on decisions made by the Justice Department regarding whether and how to prosecute alleged violations of that Act.

The CHAIRMAN. Thank you. Mr. Squillace.

STATEMENT OF MARK SQUILLACE, PROFESSOR AND DIRECTOR, NATURAL RESOURCES LAW CENTER, UNIVERSITY OF COLORADO SCHOOL OF LAW

Mr. SQUILLACE. Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear before you this morning to talk about the CLEAR Act of 2009.

My name is Mark Squillace. I am a Professor of Law and the Director of the Natural Resources Law Center at the University of Colorado Law School.

Over the course of my career, which includes two stints at the Department of the Interior, I have worked on a range of natural

resources issues, and I have especially focused on the need to promote better policies for mining development on public lands.

While I generally support the goals of the proposed legislation, I am here today to talk about two particular provisions of the proposed legislation that relate to mining on the public lands. The first appears at Section 307 concerns coal mine methane. The second provision, which appears at Section 511, involves a proposal to remove uranium from the general mining law and place it under the Mineral Leasing Act as just mentioned by Mr. Mann. I would like to address each of these issues separately.

First, on the issue of coal mine methane, underground mines are a major source of methane in the United States which we all know is a potent greenhouse gas. This coal mine methane is also a serious hazard to underground mines and for that reason methane from such mines has historically been vented into the atmosphere. In recent years, however, mining companies have begun to appreciate the economic value of capturing and selling this methane that was otherwise being vented. This obviously has enormous environmental benefits as well since it allows the captured methane to be used as a fuel and it assures that the methane will be converted to carbon dioxide and other compounds with a much smaller greenhouse gas footprint.

Unfortunately, the current law governing Federal coal leases effectively precludes this common sense solution. The coal mine methane that we are talking bout is essentially embedded in the coal. Nonetheless, the Supreme Court has interpreted Federal law in a way that requires the coal to be leased separately from the gas, and when the government leases the coal they are reluctant, of course, to lease that gas to a separate party because of the conflicts that would likely create.

Further complicating this matter, the Interior Board of Land Appeals has held that methane gas is not even subject to leasing under the Mineral Leasing Act because it is not a deposit of gas for purposes of that law. In order to understand the problem here, I would like to just describe an example from Colorado.

The West Elk Mine on national forest lands near Somerset, Colorado, has historically released between 13 and 17 million cubic feet of methane each day. In terms of greenhouse gases, it is about the equivalent of about a 300 megawatt coal-fired power plant. It is about 3 percent of total emissions in Colorado of greenhouse gases, and it is enough to heat nearly 50,000 homes each year.

Section 307 of the CLEAR Act solves these problems by simply including embedded coal methane in the Federal coal lease. In exchange for granting the coal lease or the rights to this resource the lessee would be obliged to recover the methane released during the mining to the maximum extend possible.

Moreover, for deep mining operations where most of this recoverable methane exits, the Secretary would be required to analyze the feasibility of methane recovery before issuing the lease.

Everyone wins under this proposal. The coal lessee receives the opportunity to capture and sell a valuable fuel resource. The Federal government receives new royalties from the sale of this gas, and the public is assured of a significant reduction of greenhouse

gas emissions. For all these reasons, I applaud the Committee for including this provision in the legislation and I urge its passage.

Let me turn briefly to the public lands uranium issue as well. Section 511 of the CLEAR Act would convert uranium from a locatable mineral under the general mining law to a leasable mineral under the Mineral Leasing Act. This is a good idea for a number of reasons.

First, under the mining law claimants must locate claims as either loads, which are veins of ore, or as placer deposits, unconsolidated deposits usually carried to their location by wind or water. Uranium deposits, however, do not easily fit into either category and thus the courts have struggled with how best to characterize these deposits.

Uranium also logically fits better under the Leasing Act because all the other energy minerals of fuels and fuel minerals—coal, oil and gas, tar sands, oil shale and geothermal resources—are governed by the leasing program. Leasing also enables the government to better protect the government's fiscal and environmental rights or interests.

On the fiscal side, Section 511 would end what now amounts to a subsidy of domestic uranium industry. As this Committee well knows, the general mining law allows publicly owned minerals like uranium to be taken from our lands without a royalty or other payment to the treasury. However, there is no strategic argument for subsidizing domestic uranium production. Friendly countries such as Australia and Canada have abundant uranium resources that can often be developed far more cheaply than U.S. uranium.

The environmental reasons for this proposal are even more compelling. Past uranium milling and mining on our public lands have left a huge bill that the taxpayers will have to pay to clean up. At a single large abandoned mill tailing pile on the banks of the Colorado River near Moab, Utah, for example, the Department of Energy is currently in the midst of a problem that is likely to cost more than a billion dollars. This is just one example of the 50 uranium mills on lands of the United States, 24 have now been abandoned and they are all under the jurisdiction now of the Department of Energy, which will likely incur millions of dollars to clean up these sites.

Finally, Congress should recognize that uranium mining poses special health and safety hazards that do not generally exist with other forms of mining. The tragic legacy of uranium mining on the Navajo Indian Reservation which has led to the premature death of many native workers is perhaps the most profound example of this reality.

A leasing system, of course, will not necessarily prevent future tragedies like this, but it offers the promise for a more proactive management both for siting future uranium mining projects and for assuring that they are carried out in a safe and environmentally sound manner.

Thank you for the opportunity to appear today before the Committee. I look forward to your questions.

[The prepared statement of Mr. Squillace follows:]

Statement of Mark Squillace, Professor of Law and Director, Natural Resources Law Center, University of Colorado School of Law

Thank you for the opportunity to appear before the House Committee on Natural Resources to share my views on the Consolidated Land, Energy, and Aquatic Resources Act of 2009. My name is Mark Squillace and I am a professor of law and the Director of the Natural Resources Law Center at the University of Colorado Law School. For more than 25 years, the Natural Resources Law Center has engaged policymakers to help find efficient and environmentally sound solutions to natural resource problems.

Over the course of my professional career, which includes two stints working on mining and related issues at the Department of the Interior, I have worked on a range of natural resources issues, and I have been especially focused on the need for better policies governing mineral development. While I generally support the efficiency, transparency, and accountability goals of the proposed legislation, I am here today primarily to offer my support for two particular provisions in the proposed legislation that relate to mining on the public lands. The first, which appears at Section 307 of the proposed legislation, concerns coal mine methane. The second provision, which is found at Section 511, involves a proposal to remove uranium from the General Mining Law and place it under the Mineral Leasing Act. I will address each issue separately.

Coal Mine Methane

As this Committee knows, methane, commonly known as natural gas, is a potent greenhouse gas that is approximately 23 times stronger than CO_2. Coal mining releases about 10% of all anthropogenic sources of methane (CH4) in the United States, and about 90% of fugitive CH4 emissions come from the coal mining sector, primarily underground mines. Deep coal deposits have more CH4 because of greater overburden pressure. See Identifying Opportunities for Methane Recovery at U.S. Coal Mines, EPA 430-K-04-003, 1-1 (2005).

This coal mine methane (CMM) is also a serious hazard to underground miners and for that reason, methane from such mines has historically been vented into the atmosphere. In recent years, however, mining companies have begun to appreciate the economic value of capturing and selling the methane that was otherwise being vented. In recognition of the environmental benefits associated with CMM capture and use, the Environmental Protection Agency has established the Coalbed Methane Outreach Program (CMOP). CMOP is a voluntary program designed to reduce methane emissions from coal mining activities, by removing barriers to CMM recovery and promoting its profitable use. See http://www.epa.gov/cmop/.

Unfortunately, the current law governing federal coal leasing is a barrier to CMM recovery by creating complications and obstacles that serve no one's interest. Although coal mine methane is essentially embedded in the coal resources that a federal coal lessee develops, the United States Supreme Court has interpreted federal law to separate ownership of the coal from ownership of the embedded methane gas. As a result, lessees of federal coal do not own the gas, and the gas can only be developed if it is separately leased. Amoco Production Co. v. Southern Ute Indian Tribe, 526 U.S. 865 (1999). The Southern Ute decision raises significant practical questions about how best to order development to maximize recovery of both the coal and the gas resources, as well as important legal questions about the coal developer's potential liability to the gas owner for any releases of methane that might have been captured by the gas owner had the coal not been developed first.

On most public lands disposed of after 1916, the federal government reserved all of the minerals, including the coal and the gas. Even on lands where the U.S. owns both the coal and the gas, the Mineral Leasing Act (MLA) thwarts recovery and development of the coal and gas resources because the coal and the gas resources are subject to separate competitive leasing provisions. Compare 30 U.S.C. §§201 and 226. Moreover, under Southern Ute, a lessee of federal coal does not own or have the right to develop the gas. Conceivably the federal government could lease the gas in a separate competitive leasing process, but a gas lease held by a separate entity could interfere with the operation of the coal lease, as well as the safety of coal miners in an underground mining situation.

Further complicating this matter, the Interior Board of Land Appeals (IBLA) recently held that methane gas from a coal mine is not subject to leasing under the MLA because coal mine methane is not a "deposit" of oil or gas for purposes of the MLA. Vessel Coal Gas, Inc., 175 IBLA 8, 25 (2008). While some commentators have suggested that coal lessees might simply capture gas and sell it as an incident to coal mining, the legal risks pose a strong disincentive to such development by the mining company. See L. James Lyman, Coalbed Methane: Crafting a Right to Sell

From an Obligation to Vent, 44 Colo. L. Rev. 393 (2007); Jeff Lewin, et al., Unlocking the Fire: A Proposal for Judicial or Legislative Determination of the Ownership of Coalbed Methane, 94 W. Va. L. Rev. 563 (1992).

To better appreciate the extent of the problem of methane venting, the Committee should consider the circumstances at the West Elk Mine on national forest land near Somerset, Colorado. Historic methane releases from the mine have averaged 13-17 million cubic feet per day. In terms of greenhouse gases this is about the amount emitted by a 300-400 MW coal-fired power plant. When mining begins on a new coal seam, methane releases will drop to about 7 million cubic feet per day, which is still the equivalent of nearly 1 million metric tons (MMT) of CO_2 per year, or enough methane to heat more than 48,000 homes each year. Indeed, methane releases from this single mine are equal to nearly 3% of the total greenhouse gas emissions from all electric utility plants in the State of Colorado. Final EIS: Deer Creek Shaft and E Seam Methane Drainage Wells Project, August 2007, available at, http://www.fs.fed.us/r2/gmug/policy/minerals/deer__creek/Deer__Ck__Shaft__and__ESeam__MDW__Project__FEISr2.pdf.

Several environmental groups have challenged the Forest Service decision to approve new methane gas venting at the West Elk Mine in court. Apparently in response, the BLM (which manages coal leases on national forest lands) has approved an addendum to the coal lease that authorizes the lessee "to drill for, extract, remove, develop, produce, and capture for use or sale any or all of the coal mine methane" from the leased lands. It further provides, however, that the lessee is not required to capture the CMM if it is not economically feasible to do so, "independent of the activities related to mining coal." Finally, the addendum imposes a 12.5% royalty on CMM that is captured for use or sale, except that no royalty is imposed for methane use that benefits mineral extraction at the West Elk mine site.

While the BLM deserves credit for trying to address this issue, its resolution raises two significant problems. First, the government does not appear to have any legal authority to lease gas outside the scope of the Mineral Leasing Act, and IBLA's Vessel Coal Gas decision holds that CMM is not subject to leasing under the MLA. Second, the decision to allow the lessee to continue to vent CMM unless it is economically feasible independent of the mining operation makes no sense. No other environmental restriction on mining is required to meet such an economic threshold and none should be imposed for CMM capture, especially given the growing concern over greenhouse gas emissions.

Section 307 of the Consolidated Land, Energy, and Aquatic Resources Act of 2009 solves these problems in a straightforward manner, by including embedded coal mine methane in the federal coal lease. In exchange for granting the coal lessee the rights to this valuable resource, the lessee would be obligated to recover the methane released during mining to the maximum extent feasible. Moreover, for deep mining operations where most of the recoverable methane exists, the Secretary would be required to analyze the feasibility of methane recovery before issuing any lease. The Secretary would also be required to consider the possibility of flaring methane gas if the methane cannot be recovered feasibly. Flaring would effectively convert the methane to CO_2, which would significantly reduce the greenhouse impact from methane releases. **While the intent of Section 307 seems to be to require flaring if flaring is feasible but recovery is not, the Committee should consider adding a sentence to Section 307 to clarify this intent.**

By including in every federal coal lease any embedded gas that is owned by the federal government, and by requiring the development of the coal mine methane at federal coal leases whenever it is economically and technically practical to do so, Section 307 of the Consolidated Land, Energy, and Aquatic Resources Act of 2009 recognizes the significant greenhouse gas implications of methane venting at coal mines and proactively promotes a policy to maximize recovery of CMM in conjunction with mining activities. I applaud the Committee for including this provision in the proposed legislation and strongly urge its passage.

Public Lands Uranium Leasing

Section 511 of the Consolidated Land, Energy, and Aquatic Resources Act of 2009 would convert uranium from a locatable mineral under the General Mining Law of 1872 to a leasable mineral under the Mineral Leasing Act. I strongly support this proposal for several reasons.

First, uranium deposits have never fit particularly well under the General Mining Law. Uranium deposits tend not to fit the classic definition of either a lode or placer claim and for that reason courts have struggled with how best to characterize these deposits for purposes of the General Mining Law. See e.g., Globe Mining Co. v. Anderson, 318 P.2d 373 (Wyo. 1957). Likewise, uranium deposits, and thus associated uranium mining operations, tend to occur over large relatively uniform tracts of

lands that lend themselves to the kind of advanced planning that can be accomplished through a leasing program.

Uranium also logically fits with the other leasable minerals. All of the other energy minerals or fuels—coal, oil and gas, tar sands, oil shale, and geothermal resources—are governed by leasing systems, most dating back to 1920. Leasing enables the government to better protect the public's fiscal and environmental interests. Past and current controversies about uranium mining around such national treasures as the Grand Canyon underscore how ill-suited the Mining Law is to govern uranium development. Indeed, some federal uranium is already subject to leasing rather than to the Mining Law—a result of post-World War II withdrawals of some federal land on the Colorado Plateau that vested the old Atomic Energy Commission with jurisdiction, now exercised by the Department of Energy.

The leasing program established under Section 511 would also end the unwarranted subsidy to the domestic uranium industry, and consequently to the civilian nuclear power industry. Under the General Mining Law publicly-owned uranium is mined without a royalty or other payment to the treasury. The legacy of uranium mining and milling on our public lands has also left a huge cleanup bill for the taxpayer. At a single large abandoned mill tailings pile on the banks of the Colorado River near Moab, Utah, for example, the Department of Energy currently estimates clean up costs from $844 million to $1.084 billion. See http://www.em.doe.gov/pdfs/Final.Moab.Report.pdf. Many other uranium mines on public lands have been abandoned and millions of dollars more will be needed to reclaim these sites. Moreover, uranium mines pose significant health and safety hazards, as shown by the tragic legacy on the Navajo Indian Reservation, where mining authorized by the Department of Energy contaminated water supplies and led to a dramatic rise in the incidence of lung cancer, especially among Indian miners. See e.g., Doug Brugge and Rob Goble, The History of Uranium Mining and the Navajo People, American Journal of Public Health, Vol. 92, No. 9 (September, 2002). A leasing system is not a cure-all, but it can provide for better environmental management than is usually accomplished under the General Mining Law. A leasing program for uranium will also better ensure that uranium development occurs only on those public lands that are suitable for such use and that consumers of uranium will pay the full cost of uranium development and reclamation.

Finally, there is no strategic argument for subsidizing domestic uranium production. Friendly countries such as Canada and Australia have abundant uranium resources that can often be developed far more cheaply than U.S. uranium. See http://www.wise-uranium.org/umaps.html.

A few minor changes to the current language in Section 511 would further improve it. First, subsection (f)(2) properly requires that leasing units of not more than 2,560 acres be "as nearly compact as possible." For management reasons, **lease tracts should also conform to the public land survey system to the extent possible.**

Second, at the end of subsection (j)(1) (page 67, line 19 of the bill), a phrase should be added to clarify what appears to be the committee's intent to adjust the royalty for pre-existing uranium mining properties from 6.25% to 12.5%. The phrase "**at which time the royalty shall become 12.5% of the value of production,**" would accomplish this result.

Third, subsection (j)(2), which addresses the status of pre-existing uranium mining claims, **should be changed to eliminate the one- year gap between the deadline for applying for leases and the expiration of the claims.** Under subsection (j)(1), the owner of any uranium claim may apply for conversion of the claim to a lease within two years from the date of enactment of the law. The Secretary would then have one year to decide whether to approve a lease. Whether or not a pre-existing claimant applies for a lease within two years, **all affected claims should be deemed null and void immediately after the two-year deadline has expired.** There is no good reason to extend the claims of claimants who fail to file a lease application for a third year. The Secretary is obliged to process the lease applications of claimants who file them, and make a final decision as to whether to issue a lease, whether or not any pre-existing claims have expired. These changes can be accomplished by amending section (j)(2) to read as follows:

> (2) Other Claims Extinguished—All mining claims located for uranium on Federal lands shall become null and void by operation of law, immediately following the expiration of the two-year deadline for lease applications established under subsection (j)(1); provided, however, that nothing in this language shall alter the Secretary's obligation to process and resolve lease applications filed for pre-existing uranium mining claims.

Finally, there is a minor typographical error on page 64, line 4. The fifth word "is" should be removed.

Thank you for the opportunity to appear today to offer my views on the provisions in the Consolidated Land, Energy, and Aquatic Resources Act of 2009 relating to coal mine methane and uranium leasing on public lands. I am happy to answer your questions relating to my testimony.

Supplemental Testimony submitted by Mark Squillace, Professor of Law and Director, Natural Resources Law Center, University of Colorado School of Law on the Consolidated Land, Energy, and Aquatic Resources Act of 2009

Dear Congressman Rahall:

I am grateful to have had the opportunity to appear before your Committee to discuss my views on the CLEAR Act. This letter supplements my written and oral statements of September 17, 2009 and responds to various questions from members of the Committee.

Question:

Congressman Rahall asked whether I could provide the Committee with information on the total amount of methane emissions from coal mines, as well as information about operations that currently develop methane alongside their coal operations.

Answer:

The EPA has gathered substantial information about coal mine methane as part of its voluntary Coalbed Methane Outreach Program (CMOP), which was referenced in my primary written testimony. EPA's CMOP website offers an estimate of about 115 billion cubic feet of methane gas emitted from active or abandoned underground coal mines each year. See http://www.epa.gov/cmop/basic.html. EPA also estimates that currently 11 coal mine methane recovery projects are operating at 15 active underground coal mines, and that 20 other methane recovery projects are operating at about 30 abandoned underground coal mines. http://www.epa.gov/cmop/accomplishments.html. In terms of greenhouse gas emissions, the EPA estimates that the methane recovered from these projects is the equivalent of removing over 39 million passenger vehicles from the roads for one year, shutting off more than 46 coal fired power plants for one year, or providing electricity to more than 28 million homes for one year! Id.

EPA has also identified numerous existing mines where coal mine methane is currently being recovered as well as other mine methane recovery opportunities in 12 major coal producing states, including Colorado, Illinois, Pennsylvania, and West Virginia. See Identifying Opportunities for Methane Recovery at U.S. Coal Mines: Profiles of Selected Gassy Underground Coal Mines 1999-2003, EPA 430-K-04-003, available at, http://www.epa.gov/cmop/docs/profiles_2003_final.pdf. For example, Peabody's Federal No. 2 mine in West Virginia has had a joint venture with Dominion Gas Company to recover natural gas and deliver it to a gas pipeline. Id. at p. 3-5.

Questions:

Congressman Duncan posed several questions relating generally to energy development on public lands including whether the bill would drive up energy costs, whether it gives an advantage to foreign companies, and whether it disadvantages small companies.

Answers:

These are important questions and while it is impossible to answer them with certainty until the provisions are implemented, I would like to offer several observations. First, any additional expense associated with energy development will necessarily drive up the cost of energy production. Of course, the rise in cost could be quite modest or it could be large, but the important policy question is whether the benefits achieved by the proposed legislation are worth the costs. When we allow energy development on our public lands, however, without fully understanding the consequences of that development, as for example, when we avoid NEPA compliance, it is not even possible to fully assess the costs and benefits. Given the significant risks associated with most forms of mineral development, an understanding of the consequences of that development is critical to ensuring a reasoned decision that maximizes the benefits of development and minimizes any adverse consequences. For similar reasons, when the public subsidizes uranium mining by failing to require market rate royalties to be paid, it promotes mineral development that in a free market might not be economical. This does not serve the public interest. The

CLEAR Act does a good job of promoting NEPA compliance and of assuring a fair return to the public for the leasing of its uranium deposits. In this way, it promotes mineral development where it is warranted based upon the costs and benefits of the development and where such development can fairly compete in the marketplace.

Second, the notion of foreign producers is somewhat ambiguous. As was noted at the hearing, Uranium One is actually a Canadian company that has operations in the United States. I assume that Congressman Duncan's concern was about domestic mineral production and not about whether the mine operator is a domestic company. The question then is whether companies producing uranium in the United States are placed at an unfair competitive disadvantage by the proposed legislation. While imposing a royalty obligation on a uranium mine on public lands imposes a cost not currently borne by the company, it is a fair cost that reflects market principles. As such, the uranium royalty provisions in the bill do not unfairly disadvantage uranium miners.

Finally, some costs may disadvantage smaller companies that lack the capital to engage in a major mining operation. But under-capitalized small companies are often the ones that have walked away from mining operations in the past, leaving a legacy of polluted land and water, and a massive clean-up bill that will likely be borne by the taxpayer. Federal policy should not unfairly constrain small companies from entering the uranium mining business but neither should it encourage entry by companies that lack the wherewithal to guarantee well-planned and environmentally sound mining operations that fully reclaim the mine site once mining is completed. The measures in the CLEAR Act will afford the federal leasing authority an opportunity to make judgments about the capacity of the mining operator to meet these obligations before a lease is issued.

Question:

Congresswoman Lummis posed two questions regarding uranium mining. First she asked what regulatory framework currently exists for uranium mining on public lands. She also asked what incentives, if any, exist under the bill for uranium mining.

Answer:

Uranium is currently treated as a locatable mineral under the General Mining Law of 1872. As such, a mining company can go out on federal lands that are open to location under the law and stake mining claims over any such land where valuable mineral deposits are found. Before developing those minerals, the company must submit and obtain approval from the relevant federal land management agency for a plan of operations. The relevant BLM regulations are found at 43 CFR subpart 3809. The Forest Service rules are at 36 CFR subpart 228. The rules are quite similar in mandating compliance with various environmental and reclamation standards. In certain situations, exploration activities also require prior approval by the agency.

The CLEAR Act does not directly offer incentives for uranium mining but it does provide a security of tenure for a mining company that is simply not available under the General Mining Law. A mining claimant is always subject to having its claims contested either by the federal government or an outside party, and must be prepared to demonstrate at all relevant times that its claims support a mineral deposit of sufficient value to justify "a person of ordinary prudence—in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine...." Castle v. Womble, 19 Land Dec. 455 (1894). Given the volatility in the uranium market, this is a risky proposition. A mine that might meet this "prudent person" test when uranium is selling at $140/pound, might very well not meet the test when uranium drops to $45/pound. Thus, to a large extent, the validity of any given group of uranium mining claims may be subject to the vagaries of the uranium market. By contrast, under the CLEAR Act, a uranium lessee would be assured of tenure for the term of the lease and so long thereafter as the mine is producing uranium in paying quantities. The security of tenure provided under the CLEAR Act might well prove a powerful incentive for further uranium development.

I hope that these answers are helpful to the Committee as it moves this bill forward. I would like to thank the Committee once again for affording me the honor of sharing my views on this important legislative initiative.

Response to questions submitted for the record by Mark Squillace, Professor of Law, and Director, Natural Resources Law Center

Questions from the Majority:

1. **Mr. Squillace, you testified that leasing enables the government to "better protect the public's fiscal and environmental interests." In fact, the DOE's uranium leasing program, when it started in the 1940's, was started with the express intent of "ensuring an adequate supply of uranium ore for the nation's defense program." How might a leasing program better position the U.S. to manage its uranium reserves for the long-term than a claim-staking approach under the 1872 Mining Law?**

Answer: As I mentioned in my original testimony, U.S. strategic interests are not at stake in securing an adequate supply of uranium. The largest global reserves of uranium are found in countries that are very friendly to the U.S., including Australia and Canada, and uranium can be developed far more cheaply in those countries than in the United States. See http://www.wise-uranium.org/umaps.html (Click on the data set that shows reasonably assured resources of uranium at $40/kg U. The resulting map shows substantial recoverable resources at this price in Canada and Australia but none in the United States.) Assuming, however, that the United States concluded that it was necessary to secure an adequate supply of domestic uranium, a leasing program is far preferable to a claim staking program for several reasons. First, a leasing program gives the federal government control over the location and scope of uranium development, as well as who develops the minerals and for what purpose. In this way, a leasing program can be targeted quite specifically to develop particular American uranium reserves, and to manage that development in the country's best interests. By contrast, the claim-staking program under the 1872 Mining Law, severely limits the ability of the government to control where, how, and who is developing the uranium. Claims can be located on any lands open for location, and while the government must approve a plan of operations for mining, many mining companies seem to take the view that the plan of operations cannot be so onerous as to prevent them from making a reasonable profit. While this begs the question as to whether the mining company has valid claims, it certainly invites conflict and possibly litigation over uranium development. Moreover, while the mining law generally denies the right of an alien to locate a mining claim, claims can be sold to non-citizens, Manuel v. Wulff, 152 U.S. 505 (1894), and domestic corporations can locate mining claims, even if they are wholly owned by a foreign company. 43 C.F.R. 3830.3(c) (2008). Thus, the 1872 Mining Law offers companies based in foreign countries the opportunity to stake all of the uranium deposits in the United States. Indeed, most of the current uranium mining operations in the United States are owned by foreign corporations. See George A. MacLean, Clinton's Foreign Policy in Russia: From Deterrence and Isolation to Democratization and Engagement 79, note 30 (2006).

2. **Mr. Squillace, can you share any information or analysis on the potential job or economic impacts of Section 511, which makes uranium a leasable mineral subject to a royalty, including the job creation benefits of funding uranium cleanup with the royalty.**

Answer: The potential for job creation and economic impacts from domestic uranium mining is necessarily speculative given the radical fluctuations in the price of uranium over the past several years. Currently, it is estimated that uranium mining creates fewer than 500 jobs in the United States. MacLean, supra at 79, note 30. A leasing system with the benefit of a royalty that might be dedicated, in whole or in part, to reclaim abandoned mines has several advantages in terms of job creation and economic impact. First, a leasing system makes development more predictable than it is under the 1872 Mining Law. Lessees have a relatively short window of time to develop or lose their lease. A mining claimant, by contrast, can hold a claim indefinitely, and for speculative purposes. Moreover, revenues made available from a lease royalty program to clean up abandoned mines could create many jobs and have a substantial economic impact. Currently, there are an estimated 500,000 abandoned mines in the United States. http://www.abandonedmines.gov/ep.html. Reclaiming these mine sites requires heavy, earth-moving equipment and skilled personnel. The current economic downturn means that much of this heavy equipment is currently sitting idle and could be readily made available for this work. The skill levels needed to operate this equipment is sufficiently high that well-paid jobs are likely to be created. While some level of advance planning is necessary to assure reclamation success, most of these sites are otherwise "shovel ready" and thus offer the opportunity for a relatively quick boost to the economy.

Questions from the Minority:

1. Mr. Squillace, do you know what percentage of domestic uranium is imported. Do you believe that import dependence on uranium is good for the American economy?

Answer: The United States currently produces about 8% of its domestic uranium needs. However, since uranium can generally be produced more cheaply in stable foreign countries like Australia and Canada, the domestic nuclear power industry, which provides about 20% of U.S. electricity needs, benefits greatly from having available to it a lower cost supply of uranium from stable, friendly countries. This in turn benefits the U.S. economy. Moreover, since most uranium mining in the U.S. uses the in situ leaching (ISL) method, very few permanent jobs are created by domestic uranium mining. Current estimates are that uranium mining in the United States supports fewer than 500 permanent jobs. MacLean, supra at 79, note 30. Far more jobs would likely be created by collecting a royalty from public lands uranium mines, and using that royalty to reclaim abandoned mined lands.

2. Do you believe that our dependence on foreign oil is good for our economy?

Answer: I firmly believe that our long-term reliance on foreign oil supplies is not good for our economy. More importantly, it is not good for our national security. Unlike uranium, our foreign oil supplies largely come from less stable countries with a more hostile attitude toward U.S. interests. While it makes sense to use foreign oil when it is available to us so that we can conserve our domestic supplies for the time when foreign oil may not be so readily available, the most intelligent way to minimize our long-term reliance on foreign oil, is to dramatically improve our fuel economy standards for motor vehicles. Viewed from the perspective of the past 30 years, our current efforts to improve fuel economy have been a dismal failure. In my opinion, the Congress and the Department of Transportation bear substantial responsibility for this failure.

In 1975, Congress passed the Energy Policy Conservation Act, which entrusted the Department of Transportation with the authority to establish Corporate Average Fuel Economy (CAFE) standards. The near-term goal for CAFE standards was a doubling of new car fuel economy by model year 1985. Standards were established requiring that cars built after model year 1985 achieve at least 27.5 mpg, but that standard remained largely unenforced until model year 1990. Moreover, a significant shift in consumer preferences toward light trucks and SUVs during the 1980's and 1990's meant that the savings in oil production that were expected from the higher CAFE standards were largely unrealized because light trucks and SUVs were subject to lower CAFE standards. Most tragically, efforts by some to further increase the CAFE standards in 1990's and most of the 2000's were rebuffed. Finally in 2007, Congress passed the Energy Independence and Security Act, which requires that the current CAFE standards be improved to at least 35 mpg by 2020. Under President Obama, the Department of Transportation has adopted even more aggressive standards. But even with these improvements, the United States will continue to lag far behind the CAFE standards established by Japan, the European Union, and even China. See http://www.pewclimate.org/docUploads/Fuel%20Economy%20and%20GHG%20Standards__010605__110719.pdf at page 24.

If the United States were really serious about energy security we would not have allowed more than 20 years to pass without improving our CAFE standards. Through very gradual improvements over that time, we could now be driving cars that easily exceed 40 mpg. This would have dramatically decreased our dependence on foreign oil and perhaps more importantly, would have assured American leadership in automobile fuel efficiency technologies. We are now in a race with Japan, China, and Europe over efficiency technologies and it is not at all clear that this is a race we will win. Still, we are on the cusp of some dramatic breakthroughs with battery and hybrid technologies that could significantly improve our fuel economies to levels that could not have been imagined just a decade ago. If we fail to seize this moment to demand that these technologies be deployed as quickly as possible, then it will be clear that we are still not serious about our energy security. We may also miss the opportunity to claim a leadership role in producing the fuel efficient cars of the future. That would truly be devastating for our economy.

3. Do you believe that the nations we import uranium from do a better job of protecting the environment than the United States?

Answer: Although I spent a year in Australia in the mid 1990's and studied several Australian mining operations, I do not have specific, current knowledge about either Australian or Canadian mine reclamation practices. All three countries, however, have laws that require the assessment of environmental impacts in advance

of issuing federal permits, and, on paper at least, Canada's law is superior to that of the United States in so far as it requires that developers carry out all reasonable mitigation of adverse environmental impacts. (In the U.S. we require only that mitigation be studied.)

It is my understanding that most modern uranium mining operations use the ISL method, which involves far less surface disturbance and waste production than conventional mining. Nonetheless, the ISL method can pose significant risks to groundwater, and the United States has not been free of such problems. See Gavin A. Mudd, Critical Review of Acid in In Situ Leach Uranium Mining: 1. United States and Australia, 41 Environmental Geology 390-403 (2004), available at, http://www.springerlink.com/content/bqle04wx71kkjgpv/fulltext.pdf

Ultimately, I cannot assess with specificity the relative merits of U.S. environmental compliance as compared with that in other uranium producing countries like Canada and Australia. Nonetheless, the United States is clearly not where it ought to be regarding environmental protection from uranium mining. A recent news story in the Casper Star Tribune, for example, describes significant environmental violations at the Smith-Highland Ranch Mine near Douglas, Wyoming. See Dustin Bleizeffer, Probe Finds Uranium Mining Violations, Casper Star Tribune, April 4, 2008, available at, http://www.trib.com/news/state-and-regional/article__b8f9b03a-d250-51f5-a1fc-f34646cfc567.html

Thank you for the opportunity to offer these additional comments about the Consolidated Land, Energy, and Aquatic Resources Act of 2009. I am happy to answer any additional questions you may have relating to these answers or to my other testimony.

The CHAIRMAN. Mr. Hodgskiss.

STATEMENT OF LYLE E. HODGSKISS, RANCHER/SENIOR LOAN OFFICER, ROCKY MOUNTAIN FRONT ADVISORY COMMITTEE

Mr. HODGSKISS. Good morning. I would like to thank Chairman Rahall for the invitation to testify this morning as I consider it a great privilege. My testimony this morning is very specific to Title 4 of the bill which deals with the full and permanent funding of the Land and Water Conservation Fund. I am here representing the Rocky Mountain Front Advisory Board to the Natures Conservancy.

On the Powerpoint you will see the general project area that I will be speaking of as well as a rolling slide show that will give you a glimpse of the landscape that I am working in.

As a community banker and a third generation rancher in Montana, I have no particular qualifications to be here in front of you this morning other than my real live personal experience working with a collaborative conservation effort, employing conserving easements with partial funding from land, water, and conservation funds. This testimony is meant to provide you with a grass roots example of the kind of project that can be implemented with a permanent funding as proposed in this bill.

The Rocky Mountain Front project, in my opinion, is a real win/win/win scenario. It is obviously a win for the conservation of the landscape as we are able to preserve the rich biodiversity of our plant and animal species, but just as importantly it is a win for my ranching customers as it gives them a financial tool that the would not have otherwise access to. And finally, it is also a real win for my rural community and all the communities in the area that depend on the landscape to provide for the economic stability and viability for their citizens.

The Front model employees the use of a public/private partnership that seeks to leverage Federal funds for the biggest bang for

the buck. To this date we have used $4 million of LWCF funds, and with that we have matched it with $29 million of private donations, and with that we have been able to put conservation easements on 43,000 acres. Partners to date have included U.S. Fish and Wildlife Service, the Nature Conservancy, and the Conservancy Fund.

The front buffers an area on the eastern edge of an area that many call the crown of the continent. This area encompasses 10 million acres. It includes Glacier National Park, three wilderness areas and the associated bordering Forest Service properties. To put this in perspective, this is an area of land approximately the size of Connecticut, Massachusetts and Rhode Island combined.

Private land protected by conservation easements to date in the project area is 138,000 acres. In fact, the largest U.S. Fish and Wildlife Service easement in the lower 48 was just closed that encompassed a ranch just over 12,000 acres.

The Front project is truly a community-driven voluntary project with ranchers being the most important partners. Right now we have an inventory of 15 to 16 ranchers representing 120,000 acres that are waiting for easements to be funded. Our average cost for an easement is $300 per acre. Therefore if you extrapolate that out, we have an unmet demand at the present time of $36 million, and these are third generation, third and fourth generation ranchers who are seeking to protect their ranch and maintain the habitat that they have worked hard to create over the years.

As a taxpayer and a banker, I would much prefer a conservation easement model over a fee title acquisition mainly for the reason that the management and ongoing maintenance under a conservation easement is borne by the landowner, and it also keeps the property and the land in its traditional agricultural use, and this also maintains the livelihood of the rancher, it creates jobs, it contributes to his community.

Probably the best thing I can do is give you an example of a customer of mine who had a home place of 2,500 acres. His neighbor was seeking to sell his ranch of 5,000 acres. He was able to secure a conservation easement, partially with LWCF funds and through the Conservancy and the Conservancy Fund, that enabled him to acquire the neighboring ranch at a debt level that was sustainable for his operation. By doing this he was able to bring home his nephew and his family. Now, obviously that put more kids in our schools, it contributes to our community.

Other ways that the easement funds can be used is simply to pay down debt so their cash flow is more viable, and oftentimes they will us easement funds to improve their infrastructure, maybe their water systems, buy equipment, improve their technology. All of these things contribute to the viability and profitability of the rancher which flows down to our local community.

In summary, wildlife habitat and working ranches are both key components to our American heritage. To achieve both these goals with the use of LWCF for the support of locally driven voluntary conservation is highly cost effective and efficient. It provides our ranchers in real communities with a valuable tool, that it creates opportunities to preserve our landscapes while simultaneously giving them more sustainability and viability.

I thank you for the opportunity to visit with you this morning, and would welcome any questions or clarifications you may have on my testimony.

[The prepared statement of Mr. Hodgskiss follows:]

Statement of Lyle Hodgskiss, Rancher/Senior Loan Officer, Rocky Mountain Front Advisory Committee

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to present my perspectives on H.R. 3534 the Comprehensive Land, Energy, and Aquatic Resources Act of 2009. My name is Lyle Hodgskiss. I am a third generation Montana rancher and the Senior Loan Officer for Citizen's State Bank of Choteau in Choteau, Montana. I am also a member of the Rocky Mountain Front Advisory Committee that provides counsel to the efforts of The Nature Conservancy and others in their on-going effort to protect the Rocky Mountain Front (RMF) of Montana. I am testifying today on behalf of that committee.

In 2005, the U.S. Fish and Wildlife service identified 561,000 acres of Montana's Rocky Mountain Front as a Conservation Area. This designation authorizes the USFWS to spend Land and Water Conservation Funds to purchase conservation easements on the Front. The RMF conservation area was established to protect the working agricultural and ranching landscapes of the RMF, while simultaneously protecting the world class natural resources in the place I call home.

My hometown of Choteau Montana is part of the Rocky Mountain Front Conservation Area. This is one of the newest conservation areas established by the FWS, and just two established by the Fish and Wildlife Services during the previous administration. The Nature Conservancy has been present on the Rocky Mountain Front for 30 years and even before the establishment of the conservation area, the Nature Conservancy established The Rocky Mountain Front Advisory Committee to assist their efforts to conserve land on the Front.

I support Title IV of H.R. 3534 and I thank Chairman Rahall for his leadership on fully funding the Land and Water Conservation Fund.

LWCF is the principal source of federal investments to protect the Front. Since 2005, $3.98 million in LWCF investments have contributed to the protection of 43,000 acres of private land, and leveraged $29 million in private philanthropy. Last year, LWCF funding enabled the FWS to secure an easement on Clay Crawford's ranch on the Front. At 12,130 acres, This is the largest FWS conservation easement ever purchased by the Fish and Wildlife Service in the continental United States.

This is just the latest piece of the successful conservation story of the Rocky Mountain Front. The Rocky Mountain Front is unique for a number of reasons. It is a vast, largely unspoiled landscape. It is part of the larger Crown of Continent comprising Glacier National Park, the Bob Marshall Wilderness complex and the surrounding public and private lands. Together the Crown covers over 10-plus million acres, an area larger than Massachusetts and Connecticut combined. The Crown, including the Front, is the only place in the lower 48 states that contains ALL of the plant and animal species that were present when Lewis and Clark passed through.

The Front is home to a unique and thriving population of grizzly bears. With some of the highest-quality seasonal habitat left, the Front's large intact ranches boast very high-density bear use during the spring and fall months. These grizzlies have higher reproductive rates, heavier cub weights, and adult bears rivaling the size of their Alaskan siblings. The Front is also one of the last places on earth where grizzlies still use their natural plains habitat.

Land and Water Conservation Funds are essential to conservation on the Rocky Mountain Front. The U.S. Fish and Wildlife Service works closely with the local community and organizations like the Nature Conservancy and The Conservation Fund to protect the Front, and craft solutions that work for agriculture, rural communities, and biodiversity. To date, each dollar of LWCF funds leverages more than $5 of private money, other public sources, and the critical match components for sources like NAWCA to stretch the federal investment. Since 1978, the Front partnership has protected 138,000 acres of private lands, and in doing so, supported the rural heritage and culture in the Front communities. Land and Water Conservation Funds have made it possible for this partnership (USFWS, TNC and TCF) to work at a landscape level—while addressing concerns from the agriculture community and achieving globally-significant conservation measures.

I want to emphasize that this has been a local conservation effort based on voluntary participation. The Rocky Mountain Front Advisory Committee counsels The Nature Conservancy on its efforts but it is truly a public/private partnership that

is making this project work. There is tremendous support from the agricultural community, as well as other elements of the community, to see the project to a successful conclusion.

The LWCF investment in conservation easements goes beyond the preservation of the landscape. Purchase of conservation easements helps to ensure the economic vitality of the ranching community, the many businesses agriculture supports, and the larger area economy. The current "inventory" of ranchland that is on a waiting list to participate in this project (by obtaining conservation easements over that land) exceeds 120,000 acres. This clearly demonstrates the strong broad based support that our project enjoys.

Conservation easements provide ranchers with a necessary tool, and access to funds that can be used by them in a variety of ways to improve their operations, such as to reduce the debt level on their operation in order to become more viable from a cash flow standpoint, acquire additional land to improve their economies of scale, invest in better infrastructure (fences, watering systems, irrigation systems, buildings, technology) to improve their efficiency. All of these options make ranching operations more profitable and sustainable, which in turn, pass the success onto the rural communities that depend on agriculture for their own viability.

Those are the principal reasons I support fully funding LWCF. Purchase of conservation easements not only protects and preserves the iconic landscape of the Rocky Mountain Front, but it helps it helps the larger community as well.

But it's not just in my community on the Front. LWCF has been a flexible funding source for important conservation actions throughout Montana, both on private and public land. The Front is an easement only project. Elsewhere in Montana, especially with my friends in the Blackfoot Community Project in the Blackfoot River valley, LWCF is used to acquire fee title to lands and facilitate land sales (as additions to the national forests and BLM holdings), as well as conservation easements.

Similar to our advisory committee, the Blackfoot Community Project is a community-based, community-supported effort to preserve the land and character of that valley. This group, from a community-based grass roots perspective, concluded that federal ownership would ensure continued public access to important recreational lands, while ensuring protection of critical wildlife habitat.

When complete, the Blackfoot Community Project will conserve over 100,000 acres in diverse public and private ownerships. It will help maintain a rural way of life for that community. LWCF is and has been a critical funding component of this project.

The Land and Water Conservation Fund leverages landscape-level accomplishments throughout Montana. LWCF Funds are a necessary component in the Blackfoot valley, in the Centennial valley west of Yellowstone National Park, in the Beartooth Mountains south of Billings, and in many other places throughout Montana and the West.

On the Rocky Mountain Front we are experiencing a crisis of opportunity for private land conservation. Last year's economic downturn, a time of generational transfer and associated estate issues, as well as the need to increase operations and update technology to remain competitive, have affected awareness and encouraged landowners to re-assess their operations and their "tools" to maintain those livelihoods. On the Rocky Mountain Front, conservation easements are seen as an important new management tool for the community. So important in fact that current landowner-demand for easements on the Front again, has grown by 120% in just one year, to the previously mentioned 120,000 acres.

I support full funding of the Land and Water Conservation Fund, for the many reasons cited above. As important as full funding, however, is the provision making full funding permanent. Permanent funding will give people and the agencies the ability to anticipate and plan for future projects knowing there will be an available source of funds available. It will allow for more efficiency and cost-effectiveness over the long term, to the benefit of America's heritage, and our rural places like Montana's Rocky Mountain Front. Previously, as the federal commitment to LWCF has varied greatly, the ability of The Nature Conservancy and USFWS to work with land owners to protect their land has also fluctuated. In addition to generation transfer and associated estate issues and the challenging economy, this lack of certainty has contributed to the current backlog of opportunities on the Front, and other project areas in other rural places throughout the West.

Again, I want to express my support for full and permanent funding of the Land and Water Conservation Fund as expressed in Title IV of Chairman Rahall's H.R. 3534.

Thank you for the opportunity to testify and I welcome any questions you may have.

The CHAIRMAN. The Chair thanks the panel for their testimony this morning. Before proceeding with questions, I would ask unanimous consent to enter two pieces of testimony into the record. First, I would like to enter the testimony of the Sportsmen for Responsible Energy Development, along with two reports they have produced with recommendations on how to better develop energy on Federal lands without impacting hunting and fishing opportunities.

Second, I would like to enter the testimony of the Nature Conservancy. Their testimony outlines their support for full and dedicated funding for the Land and Water Conservation Fund.

Without objection these will be entered in the record.

[The information submitted for the record by the Sportsmen for Responsible Energy Development follows:]

Statement submitted for the record by Sportsmen for Responsible Energy Development

National Wildlife Federation (NWF), Theodore Roosevelt Conservation Partnership (TRCP), and Trout Unlimited (TU) would like to thank Chairman Rahall and Ranking Member Hastings along with the distinguished members of the committee for the opportunity to submit written testimony as we open a dialogue on the complexities of energy development.

Our three organizations together represent Sportsmen for Responsible Energy Development (SFRED). SFRED is a coalition of more than 500 businesses, organizations and individuals working together to promote and support responsible energy development in the Rocky Mountain West. SFRED provides credible, science-based solutions supported by hunters, anglers, businesses and organizations from across the nation.

Approximately half of the roughly eight million people living in the energy-rich states of Colorado, New Mexico, Montana, Utah and Wyoming are hunters, anglers or wildlife-related recreationists.[1] When non-residents are included, more than six million individuals hunted, fished or participated in wildlife-related recreation in these states in 2006, contributing nearly $7.3 billion to state and local economies.[2] In addition to serving as important ecological resources, fish and wildlife in the West are important economic resources that, if responsibly managed, can provide a reliable and consistent economic base for the region in perpetuity. Irresponsible energy develop threatens that economic base as well as the quality of life values of clean air and water and healthy, sustainable populations of fish and wildlife.

In May 2008, SFRED brought together experienced land managers, scientists, planners, and fish and wildlife experts from across the West to create a framework for implementing responsible energy development. That framework became the Sportsmen for Responsible Energy Development Recommendations for Responsible Energy Development including specific proposals for legislation.[3]

Sportsmen support responsible energy resource development on public lands. Unfortunately, years of haphazard and often irresponsible energy extraction coupled with special exemptions for energy corporations have harmed important big-game habitat and sage-grouse breeding areas, as well as contaminated rivers and diminished recreational fisheries, resulting in decreased public hunting and fishing opportunities. Future energy development on public lands—including renewable energy development—must consider the many uses public lands provide and conserve the uniquely western landscapes, local economies and, especially, the way of life.

Over the past decade, unprecedented amounts of vital fish and wildlife habitats on public lands have been harmed by oil and gas drilling. Millions of additional acres are leased for oil and gas development. As our nation struggles with its dependence on energy generated from fossil fuels, we can expect more public lands to be impacted. The vast majority of the new drilling on public lands is for natural gas. Americans use 22 trillion cubic feet of natural gas a year. To sustain current levels of consumption, we will need to drill tens of thousands of new wells each year.

---

[1] U.S. Department of the Interior, Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau. 2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

[2] Id.

[3] Copies of these documents are attached.

Legislation to reduce carbon emissions may actually increase demand for natural gas, at least in the short term, as industry shifts from coal to cleaner-burning natural gas. That pace of development will have devastating impacts on western public lands and the fish and wildlife that depend on those lands unless we develop responsibly with careful conservation of our hunting and fishing heritage.

Just last week SFRED released a report on ten treasured locations to go hunting and fishing on public lands in the West that are imperiled by ongoing or proposed oil and gas development.[4] We urge the Committee members to read our report.

The development of renewable energy resources on public lands will be a significant addition to the western landscape and this development must be approached with learned caution, especially where irreplaceable fish and wildlife habitat—and hunting and fishing opportunity—is concerned. Development of utility-scale renewable energy generation and transmission facilities will transform the lands upon which they are located. An inappropriately sited and constructed renewable energy facility has the same potential to cause significant damage to the environment and to eliminate vital fish and wildlife habitat as an inappropriately sited natural gas field.

SFRED appreciates the Chairman's efforts to address responsible energy development, both renewable and non-renewable, on our nation's public lands and waters, and we strongly support many of the proposals in this bill. These reforms include many of the SFRED recommendations for improved management, including fewer onshore oil and gas lease sales per year, increased rental fees for onshore oil and gas leases, elimination of the special treatment afforded oil and gas operations under the Energy Policy Act of 2005 that shielded these operations from adequate review under the National Environmental Policy Act and the addition of required best management practices for both renewable and non-renewable energy operations on public lands. We also thank the Chairman for defining the responsibilities of the land management agencies to require bonds sufficient to cover the actual costs of reclamation.[5]

However, there are also provisions that have not been included in the bill that we believe are necessary to ensure that energy development on public lands is conducted responsibly. These include a shorter lease term and an increase in royalty rates for onshore oil and gas lessees. SFRED believes strongly that the current ten-year lease term and the willingness of the Bureau of Land Management (BLM) to suspend the tolling of the lease term has led to the creation of a speculative market in federal minerals that deprives our nation of needed energy supplies and wreaks havoc with the management of other resources on the public lands. While the bill provides for increased rental payments over the last five years of a ten-year lease, we do not believe an additional $.50 per acre will provide sufficient incentive to ensure diligent development of oil and gas leases.[6] With respect to the royalty rate for onshore oil and gas leasing, SFRED notes that although the Secretary of the Interior clearly has the authority under the Mineral Leasing Act of 1920 to raise the royalty rate above 12.5%, that authority has never been exercised. Congressional action is therefore required.

We also believe that both the Forest Service and BLM are in need of new direction from Congress regarding the content of their land use plans and the adequacy of those plans to address the impacts of renewable and non-renewable energy development on other resources of federal lands. Under the current statutory and regulatory framework, analysis of the environmental consequences of energy development occurs on a project-by-project and well-by-well basis, a strategy that all but guarantees an inadequate evaluation of development's full impacts. This piece-meal approach fails to account for the cumulative effects of energy development across habitats and watersheds.

Moreover, sportsmen and other public lands users are often caught in a trap. When they insist resource management agencies fully evaluate potential impacts to fish, wildlife, and water and air resources at the planning or leasing stage, BLM and the Forest Service respond that such analysis will occur at a later, site-specific level. Yet when sportsmen and others then seek comprehensive evaluations of devel-

---

[4] A copy of the executive summary of the SFRED report Hunting and Fishing Imperiled is attached. The full report can be found at SFRED's website: http://sportsmen4responsibleenergy.org.

[5] Currently, oil and gas companies can provide a single bond for $150,000 that covers all of their drilling operations on public lands nationwide. SFRED believes the bill should mandate the promulgation of new regulations to establish more appropriate bonds for oil and gas development similar to those required for coal mining operations on public lands.

[6] This was well-documented in the recent General Accountability Office (GAO) report on incentives to encourage diligent development of leases. GAO, Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development GAO-09-74 (October 2008).

opment's effects before permits to drill are approved, the agencies claim their ability to protect natural resources is now limited by the fact that a lease has already been issued.[7] SFRED is concerned that the bill may now create this same conundrum for renewable energy development. Leases will be issued committing public lands and resources to renewable energy generation without any real analysis of the consequences for other public lands values.[8] In its recommendations for legislative changes to ensure responsible oil and gas development, SFRED offered specific language to address these concerns with respect to oil and gas leasing.[9] We believe that similar provisions should apply to renewable energy leasing as well, and that the cumulative impact of uses such as oil, gas, coal, wind, solar, geothermal, timber, and grazing must be addressed in a landscape-level analysis that employs an interagency and intergovernmental approach.

In conclusion, hunters, anglers and sportsman from all walks of life depend not only on energy development for jobs and economic support but also the landscape that this development encompasses. The sportsman way of life is an enormous economic driver in much rural and populated areas of the West, and it's important we protect this important role of hunting and fishing. As we embark on this new energy frontier the sportsman community urges the committee and all parties involved to work together to develop a common sense and responsible energy program.

Again thank you for the opportunity to submit comments to the House Natural Resources Committee regarding H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act.

Attachments:

- SFRED specific comments and suggestions on the provisions of the CLEAR Act (HR 3534)
- SFRED recommendations for Responsible Oil and Gas Development Report
- SFRED hunting and fishing imperiled report

SFRED specific comments and suggestions on the provisions of the CLEAR Act (H.R. 3534)

Section 2. The following recommendation comes from the attached SFRED recommendations referenced above. Federal law provides that oil and gas leases "shall be leased...to the highest responsible qualified bidder."[1] However, federal law does not define "responsible qualified bidder" and, outside of providing a few minimum qualifications,[2] the BLM has wide discretion in determining whether a bidder is "responsible" or not. Like federal law, the BLM's regulations state that leases "shall

---

[7] Like other multiple uses of federal public lands, federal law and BLM's regulations make clear that oil and gas leases convey to the lessee a usufructuary right to the lease parcel that is subject to the federal land management agencies' multiple-use management of the land. BLM's regulations provide that:

> A lessee shall have the right to use so much of the leased land as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations...; restrictions...; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.

43 C.F.R. § 3101.1-2 (2007) (emphasis added).

Despite the plain language of BLM's regulations and the lack of any federal legislative intent or statutory language to the contrary, there is substantial confusion regarding the extent of the right conveyed by an oil or gas lease. Some industry advocates incorrectly claim that oil and gas leases convey a property right that is compensable under modern takings law. Because of this confusion, it is important to reinforce the fact that leases do not convey a property right and that federal land management agencies retain the ability to manage leased lands for fish, wildlife, water and air resources, and other multiple uses.

With respect to renewable energy, the development right that is granted with the issuance of a lease is less well defined. Does the lease grant a right to go forward with a specific generation facility identified as the preferred alternative in a comprehensive environmental impact statement or does it grant the right to develop the leasehold in whatever manner the lessee determines will maximize its return on investment?

[8] We are concerned that the discussion draft creates the risk of developing energy resources without a comprehensive analysis of environmental impacts. We believe the appropriate solution is the development of comprehensive land use plans which establish impact thresholds for fish, wildlife, and water and air resources that cannot be exceeded whether leases have been issued or not.

[9] A copy of these recommendations is attached. See pages 1-6 for specific language addressing these planning issues.

[1] 30 U.S.C. § 226(b)(1)(A).

[2] See 30 U.S.C. §§ 181, 184(d).

be awarded to the highest responsible qualified bidder"[3] but fail to define what makes a qualified bidder "responsible." We recommend adding a definition of "Responsible Qualified Bidder". This definition would read, "The term 'responsible qualified bidder' means any otherwise qualified bidder who does not have blatant or chronic prior or existing bad lease performance. Bad lease performance includes, but is not limited to, performance under an existing or prior oil or gas lease that violates the terms of the lease or permitting documents, leases that are inadequately monitored or enforced, or leases that fail to comply with comprehensive mitigation and reclamation strategies."

Section 101 (f) (2). After "land uses" on line 3, we suggest adding "..., as well as areas that are unsuitable for oil and gas development." Oil and gas development can have an intense impact on the landscape, functionally excluding other multiple uses of the land and ruining important fish, wildlife and water resources for generations to come. Even when the most protective stipulations are in place and modern technologies and practices are employed, irreparable harm to the productivity of the land is only a spill away. It shouldn't take an Act of Congress to protect the most important public lands from oil and gas development. However, in Montana's Rocky Mountain Front and New Mexico's Valle Vidal—an area donated to the U.S. citizens by Pennzoil in 1982 because of its exceptional fish and wildlife habitat—it took just that. Similarly, it was up to Congress to protect valuable fish and wildlife habitat in the Wyoming Range.

Section 306. This section has the potential to significantly improve management of oil and gas development on public lands. One suggested addition: in line 12 we suggest inserting the italicized text, "...on Federal lands in a manner consistent with ecosystem-based management that avoids where practical, minimizes, and mitigates actual and anticipated impacts to environmental habitat functions resulting from oil and gas development." The definition of ecosystem-based management herein will help guide the creation of protective best management practices.

Section 502. The activities discussed in this provision are primarily land management activities and should be the responsibility of the land management agencies rather than OFEML.

Section 502(2)(B). We believe renewable energy lessees and operators should be required to complete interim reclamation. The useful life of a solar or wind facility is likely to be much more than 30 years. The draft language does not appear to require reclamation of areas disturbed by construction of facilities for decades while the facilities are operating. Section 502 should be revised to require interim reclamation requirements applicable during the project's useful life.

We also believe that no onsite mitigation alone will be adequate to sustain the ecological function of public lands on which many renewable energy facilities are located. Unlike oil, gas, and coal, the wind and sun are renewable sources of energy which will not be exhausted. The landscapes impacted by renewable energy facilities will not be restored to their current condition for the foreseeable future. This is emphatically true with respect to solar energy generation facilities. The facilities will result in the total and, essentially, permanent loss of fish and wildlife habitats. Therefore, the only way to mitigate the impact of these facilities is to require the restoration or acquisition and preservation of comparable ecological resources elsewhere along with on-site actions to minimize the severity of impacts to natural resources. However, BLM insists that it cannot require off-site or "compensatory" mitigation.[4] Section 502 should clarify that the Congress intends for BLM and the Forest Service to ensure that onsite mitigation is performed and to require compensatory mitigation where other onsite measures are inadequate or infeasible.

Section 503. The hunting and angling community is supportive of responsible increases in renewable energy production from public lands. We also support responsible development of oil and gas so long as it is done in a manner that avoids or minimizes harm to fish, wildlife, and water resources. The impacts of poorly planned oil and gas development on public lands and the lack of sufficient resources for mitigation, monitoring, and adaptive management to protect and restore fish and wildlife habitat have become serious problems.

This bill could have the effect of accelerating oil and gas development (by penalizing leases that are not developed) and layering over the top of an already impacted landscape the effects of new renewable energy development. Avoiding, minimizing, and mitigating impacts to fish and wildlife habitat and recreational opportunities associated with energy development of any form is essential to maintaining the flow of billions of dollars generated from hunting, fishing, and wildlife related recreation

[3] 43 C.F.R. § 3120.5-3(b).

[4] See BLM IM 2008-204 at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/20080/IM_2008-204.html

in New Mexico, Arizona, Nevada, Wyoming, Colorado, California, Idaho, and other public land states.

It is vital that state and federal agencies have the resources necessary to properly manage energy development. Thousands of miles of transmission lines may be needed to move renewable energy to market. Funding must be made available to avoid fish and wildlife damage and for mitigation and restoration.

For that reason, we propose that the revenues collected by the federal government pursuant to the regulations established in subsection (c) of this subtitle, and from revenues collected from an increase in royalties associated with onshore oil and gas development (as described below), should be placed in two accounts, a Renewables Mitigation Fund and a Onshore Oil and Gas Mitigation Fund. These funds would be available each fiscal year for expenditure for the purposes of this Act without further appropriation. Each of these funds would have a Federal Resource Management Account, and a State and Community Restoration Account—as follows:

Renewables

- **Federal Resource Management Account:** 50 percent shall be deposited into a special fund in the Treasury and used by federal agencies for mitigation, monitoring, inventory, and management associated with conserving fish, wildlife, and water resources affected by renewable energy development.
- **State and Community Restoration Account:** 50 percent shall be paid by the Secretary of the Treasury to the one or more States within which the income is derived and used by: state resource agencies to monitor and mitigate the effects of energy renewable energy development on fish, wildlife, and water resources affected by renewable energy development; local communities to mitigate the effects of renewable energy development on impacted communities; and by other non-profit entities to mitigate (including off-site mitigation) and restore areas affected by renewable energy development.

Onshore Oil and Gas

In addition, as stated earlier, the Congress should increase the minimum royalty rate associated with onshore oil and gas development from 12.5% to 18.75% as proposed in an earlier draft. We propose that these additional revenues and the other fee increases and penalties for onshore oil and gas development be used to create new funding fish, wildlife, and water resource mitigation and restoration associated with oil and gas development as a companion fund to accompany the Renewables Fund. Specifically, we propose that:

- **Federal Resource Management Account:** 50 percent of these revenues be deposited into a special fund in the Treasury and used by federal agencies for mitigation, monitoring, inventory, and management associated with conserving fish, wildlife, and water resources affected by onshore oil and gas development.
- **State and Community Restoration Account:** 50 percent shall be paid by the Secretary of the Treasury to the one or more States within which the income is derived and used by: state resource agencies to monitor and mitigate the effects of oil and gas development on fish, wildlife, and water resources; local communities to mitigate the effects of oil and gas development on impacted communities; and by other non-profit entities to mitigate (including off-site mitigation) and restore areas affected by oil and gas development.

Section 511(d). We are very supportive of moving uranium from hard rock mining into this new regime. You might consider adding to the end of this provision, the following: "Upon consideration of these factors, the Secretary may decide not to lease an area for uranium mining." This would underscore the discretionary nature of the activity.

The CHAIRMAN. The Chair recognizes the gentleman from Washington.

Mr. HASTINGS. Thank you, Mr. Chairman. I ask unanimous consent to submit for the record a series of letters about this bill which we have received. The first is from the American Chemistry Council and signed by our former Democratic colleague from California, Cal Dooley, which states that this bill, and I quote, "fails to contribute in any way to the energy security of the United States." In addition, I am asking to submit a letter from the Western Business Roundtable and a statement from the National Mining Association.

The CHAIRMAN. Without objection, so ordered. So does that make it two for two?

Mr. HASTINGS. I had three.

The CHAIRMAN. Oh, you had three. I only had two. All right.

[The information submitted for the record by the American Chemistry Council, Western Business Roundtable, and the National Mining Association. follows:]

September 15, 2009

The Honorable Nick Rahall II
Chairman, Committee on Natural Resources
United States House of Representatives
2307 Rayburn House Office Building
Washington, DC 20515-4803

Re: H.R. 3534

Dear Chairman Rahall:

As the House Natural Resources Committee begins hearings on H.R. 3534, "The Consolidated Land, Energy, and Aquatic Resources Act of 2009," the American Chemistry Council (ACC) is concerned that the bill fails to contribute in any way to the energy security of the United States. Our industry and the entire U.S. manufacturing sector are dependent on competitively-priced energy to maintain our competiveness and the jobs we provide. By neglecting domestic energy supply, the Committee is missing a significant opportunity to enhance the nation's energy security, energy diversity, and economic outlook. Imposing tax and procedural provisions that raise the cost of fuel and energy feedstock borne by American manufacturers will impair U.S. competitiveness and employment.

Last week the House Subcommittee on Energy and Mineral Resources held a hearing on H.R. 2227, "The American Conservation and Clean Energy Independence Act of 2009". ACC submitted a letter of support for the bill (dated September 8, 2009 and introduced to the record by Subcommittee Chairman Jim Costa) because we believe H.R. 2227 would aid in the important effort to solidify the United States' energy security by ensuring development of a diverse domestic energy supply, critical to maintaining jobs and competitiveness in the United States. We would hope that lawmakers would move legislation of this nature through the Committee.

Natural gas is an important U.S. energy source for clean energy such as cleaner electricity. It's also a key low-emission energy source that can be accessed, while other sources and technologies such as carbon capture and storage, nuclear, and renewables and alternatives are in development or under capacity. For the business of chemistry, natural gas is an important raw material that goes into energy-saving applications such as solar panels, wind turbines, building insulation, compact fluorescent light bulbs, lithium-ion batteries, lightweight vehicle parts, and many others—a use that in most cases does not emit greenhouse gases. Unfortunately, H.R. 3534 will not contribute to increased production of natural gas.

September 15, 2009
Page 2

Earlier this year, the House of Representatives passed H.R. 2454, the American Clean Energy and Security Act of 2009, and the Senate is considering a similar bill now. Each of these bills would dramatically increase America's demand for natural gas. These new natural gas requirements—created by Congress—are additional proof of why Congress needs to expand the base of domestic natural gas supply. If Congress chooses to legislate a need for more natural gas, as it has done in H.R. 2454, then it simply must also legislate increased domestic energy supplies. H.R. 3534, however, does not, as currently drafted, provide for this meaningful opportunity.

With a smart energy policy, the United States can reduce greenhouse gas emissions while bringing about efficient, available, affordable, and diverse energy. We continue to support efforts by Congress to develop a comprehensive policy including energy efficiency and conservation, energy diversity (e.g., renewables and alternatives, nuclear, carbon capture and storage, and combined heat and power), and domestic oil and natural gas supply. We strongly urge the Committee to add new domestic oil and natural gas supply to H.R. 3534 and take up legislation such as H.R. 2227.

Sincerely,

Cal Dooley

Cal Dooley
President and CEO

cc: Committee on Natural Resources

Statement
For Immediate Release September 16, 2009
Contact: Jennifer Scott, ACC, (703) 741-5813
jennifer—scott@americanchemistry.com

ACC: HOUSE NATURAL RESOURCES COMMITTEE BILL MISSES OPPORTUNITY TO ADVANCE U.S. ENERGY SECURITY

Domestic Energy Supply Necessary to Maintain America's Manufacturing Competitiveness and Jobs

ARLINGTON, VA (September 16, 2009)—*Today the U.S. House Committee on Natural Resources began a two-part legislative hearing on the "Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009 (H.R. 3534)." Additional information is available at http://resourcescommittee.house.gov/.*

American Chemistry Council (ACC) President and CEO Cal Dooley issued the following statement:

"We are concerned that H.R. 3534 fails to contribute in any way to the energy security of the United States. Our industry and the entire U.S. manufacturing sector are dependent on competitively-priced energy to maintain our jobs. Last year, Congress confirmed the importance of offshore domestic energy when it lifted the moratorium on development in the Outer Continental Shelf (OCS). By neglecting domestic energy supply, the Committee is missing a significant opportunity to enhance the nation's energy security, energy diversity and economic outlook. Imposing tax and procedural provisions that raise the cost of fuel and energy feedstock borne by American manufacturers will threaten U.S. competitiveness and employment.

"The House Subcommittee on Energy and Mineral Resources recently held a hearing on legislation that would ensure the development of diverse domestic energy supply critical to maintaining jobs and competitiveness in the United States (H.R. 2227). We would hope that lawmakers would move legislation of that nature through the Committee.

"Natural gas is an important U.S. energy source for clean energy such as cleaner electricity, renewable fuels, cleaner transportation fuels (e.g. ultra-low-sulfur diesel)

and energy efficiency. It's also a key low-emission source while others such as carbon capture and storage, nuclear, and renewable and alternatives are in development or under capacity. For the business of chemistry, natural gas is an important raw material for chemistry that goes into energy-saving applications such as solar panels, wind turbines, building insulation, compact fluorescent light bulbs, lithium-ion batteries, lightweight vehicle parts, and many others—a use that in most cases does not emit greenhouse gases. Unfortunately, H.R. 3534 ignores this vital use of natural gas.

"With a smart energy policy, the United States can reduce greenhouse gas emissions while bringing about efficient, available, affordable and diverse energy. We continue to support efforts by Congress to develop a comprehensive policy including energy efficiency and conservation, energy diversity (e.g. renewables and alternatives, nuclear, carbon capture and storage, and combined heat and power), and domestic oil and natural gas supply. We strongly urge the Committee to add new domestic oil and natural gas supply to H.R. 3534 and take up legislation such as H.R. 2227. "

# # #

www.americanchemistry.com/newsroom

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care...common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $689 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

[A letter submitted for the record by the Western Business Roundtable follows:]

WESTERN BUSINESS ROUNDTABLE
200 Union Blvd. #105
Lakewood. Colorado 80228
www.westernroundtable.com

September 16, 2009

The Honorable Nick Rahall
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall,

The Western Business Roundtable and its diverse membership are writing to express concern regarding the Consolidated Land, Energy, and Aquatic Resources Act (H.R.3534). We have reviewed this legislation and, unfortunately, we believe it would frustrate future domestic oil and gas production.

As an organization comprised of both energy producers and consumers, the Roundtable recognizes that energy is the foundation of our domestic economy and powers the standard of living upon which American citizens rely. The environmentally responsible development of the full range of our domestic resources can be a "win" for the nation in a number of ways: dramatically improving energy security; diversifying our domestic energy supply; adding thousands of well-paying American jobs; helping with our balance of payments and economic growth during times of recession by bringing billions of dollars into the U.S. Treasury instead of sending them abroad.

Many in the 111th Congress have made the move to a "new energy future," based on renewable energy, among their highest priorities. Of course, the reality is such a renewables-rich future will have to be backed up by traditional baseload resources. A robust domestic natural gas supply will be necessary to help fulfill that role.

The Roundtable believes strongly that a strong and economically sustainable national energy policy must rest on three basic premises: responsible production from all feasible domestic energy sources; robust, incentive-based policies to encourage the development/deployment of next generation energy technologies; and policies to encourage energy efficiency and conservation practices to ensure the wise use of our domestic resources.

H.R.3534 fails to meet these goals. The bill is nothing short of a frontal attack on domestic oil and gas production. For example, it would:

- Remove energy authority for the Bureau of Land Management (BLM) and abolish the Minerals Management Service which manages the federal Outer Continental Shelf (OCS). In place of these departments, a brand new bureaucratic arm would be set up at the Department of Interior—the Office of Federal Energy and Mineral Leasing which will be responsible for all onshore and offshore leasing and lease developments;
- Institute complicated and bureaucratic planning processes, including establishment of local councils to make rulings on development sites;
- Raise royalty rates for oil and gas across-the0board;
- Reduce the term for new leases from ten to five years;
- Impose "use it or lose it" lease terms;
- increase fines and penalties;
- Repeal important deep water energy provisions from current law; and
- Eliminate the onshore and offshore royalty-in-kind program.

The Roundtable urges you not to move forward with a rushed markup of H.R.3534in its current form. Rather, we hope you will adopt a more inclusive approach. Certainly, the House is blessed with a large number of Members already engaged on energy policy issues. For example, the House Blue Dog Coalition, the House Western Caucus and the Republican Study Committee have already advanced a variety of proposals and principles that are worth the Committee's consideration. Likewise, a bipartisan group of35 Members, including a number of your Committee colleagues, have sponsored H.R. 2227, which deals with a number of these issues. All these policy initiatives deserve full consideration by the Committee.

The Western Business Roundtable appreciates your efforts and would like to have a constructive dialogue with you on this and any other energy legislation that is considered by the Committee.

Sincerely,

Jim Sims
President and CEO
Western Business Roundtable

The Western Business Roundtable is a broad-based coalition of companies doing business in the Western United States. Our members are engaged in a wide array of enterprises, including: manufacturing; retail energy sales; mining; electric power generation and transmission; energy infrastructure development; oil and gas exploration development, transportation and distribution; and energy services. We work to defend the interests of the West and support policies that encourage economic growth and opportunity, freedom of enterprise and a commonsense, balanced approach to conservation and environmental stewardship.

[A letter submitted for the record by the National Mining Association. follows:]

Statement submitted for the record by the National Mining Association

The National Mining Association (NMA) appreciates the opportunity to provide this statement to the committee. NMA is the principal representative of the producers of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining industry.

Our members have a significant interest in the exploration for and development of minerals on federal lands. Federal lands are an important source of minerals, energy and non-energy, that are critical to the nation's economic security and well-being. Mining on federal lands creates high-wage jobs, contributes to the economic vitality of local communities and is essential for meeting the nation's resource needs and to rebuilding America.

Applicability of Title I

It is unclear whether Title I, "Consolidation of Department of Interior Energy and Minerals Leasing Programs", is intended to apply to federal coal and leasable federal minerals. While the bill description and the title imply that programs dealing with the leasing of all federal leasable minerals will be managed by the newly established Office of Federal Energy and Mineral Leasing ("the office"), the enumeration of functions transferred to the office are limited to those of the Mineral Management Service (MMS), except for auditing and compliance management, and the oil and gas management program of the Bureau of Land Management (BLM) (section 101(b)).

However, Section 101(d) states, "ADMINISTRATION.—The office shall administer its functions by such means as are reasonably necessary to carry out the purposes of this Act...the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C.351 et seq.)...and all other applicable Federal laws." This provision implies that the new agency will oversee the leasing and royalty collection functions for coal and all leasable minerals.

These provisions conflict, or at least are so vague, as to leave lessees of federal resources other than renewable energy resources and oil and gas at a loss as to what their relationship with the newly formed office will be. The ambiguous scope of Title I must be clarified so that potentially affected parties can fully analyze the impact of the proposed legislation on their enterprises.

Application of FOGRMA Statutes to Federal Solid Mineral Lessees

Section 219 of the bill would apply the provisions of 107, 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) to any lease authorizing the development of coal or any other solid mineral on federal lands. NMA contends that oil and gas is not comparable to coal or other solid mineral, and a one-size-fits-all oil and gas policy should not be applied to solid minerals. Solid minerals are already subject to interest on late payment of royalties, and the provisions of leases enable BLM to take steps to cancel a lease for non-performance of lease terms, which include reporting and payment of royalties.

It is NMA's understanding that civil and criminal penalties were incorporated into FOGRMA due to significant underreporting of federal oil and gas royalties resulting from the lack of an effective audit program, multiple interests in a working well and the subjectivity of measuring production through well-head meters. The oil and gas criminal penalties have been in place for more than 25 years, and MMS has never indicated the need for similar statutory penalties for solid minerals. The primary reason is that the coal and solid mineral's model and methods of tracking production and revenues are significantly different from the oil and gas industry with their vertical integration. If there is a legitimate concern with implementation of the Mineral Leasing Act (MLA), then a solution should be proposed within the context of the MLA and should be mineral-specific.

Coal Mine Methane Recovery

Any provision in section 307 that mandates the production, capture and/or flaring of coal mine methane (CMM) would eliminate opportunities for these facilities to generate domestic offset credits that will most likely be included in H.R. 2454, the American Clean Energy and Security Act (ACES). EPA's own modeling has shown that reduction in offset supply will increase the costs of any cap-and-trade program to the U.S. economy. If it is required by law, these carbon capture activities will not meet the "additionality" requirement likely to be included in both public and private offset registration protocols.

EPA's analysis of ACES concluded that the regulation would eliminate offset project opportunities at coal mines and mandated recovery would increase compliance costs for the U.S. economy as a whole. Coal mines may provide some of the most readily available and low-cost offset opportunities. Offsets would be needed most in the first 5-10 years of any cap-and-trade program. In those first years, advanced emission reduction technologies, as well as large-scale land-based carbon sequestration, will not yet be available. As a result, domestic methane-based offset projects could play a key role in fostering cost containment and reducing the risk of allowance price volatility.

Section 307 also raises the question of whether the Department of the Interior (DOI) or its delegated expert would assess the potential value of offset credits in determining if the CMM can be "economically captured and either put to productive use or flared." Also, the many variables in assessing possible offset credit value in the future will create confusion and dispute.

There are many differences between the federal oil and gas leasing and coal leasing programs related to acreage holding limitations, the general leasing process,

how a regional or specific Environmental Impact Statement or Environmental Assessment is prepared, diligent development and continuous development obligations, "maximum economic recovery", by-passed coal concepts, and how rentals and royalty are calculated and paid. Section 307 does not clearly establish which rules would govern CMM recovery from a federal coal lease and the development of that resource. It is necessary to clarify these issues, since many of these concepts and mandates, such as diligent development and continuous development obligations, cannot apply to the CMM asset under the lease.

The following are specific concerns with section 307 as introduced:

Section (e)(1):

The bill makes no reference to situations where the methane is leased to a third party prior to the issuance or renewal of a coal lease. If that CMM lease expires later, does this CMM automatically fall under the coal lease that was previously issued, or will it be added as a mandate on the next lease renewal or modification? If so, how will the provisions be implemented for determining whether CMM can be captured? It should be noted that the value of CMM wells is greatly diminished if they are not drilled far in advance of mining. This increases the depreciation and shortens the period to obtain economic payback. Stated differently, one cannot start a CMM program at an active coal mine without having major impact on the CMM economics.

Section (e)(2):

The use of the word "requirement" negatively impacts any "additionality" assessment as set forth above. Further, a "requirement that the lessee recover the coal mine methane," begs the following questions: How much has to be recovered? Is there a certain percentage that must be recovered before mining starts? If the mandated percentage is not recovered, does mining have to wait until the percentage is met? (If this is the case, the impact on customers and employees will be significant as they must wait for mine development to proceed.) What if the initial production rates and production decline curves are not known for a particular coal seam or region such that the date for recovering the minimum percentage is not known? Such uncertainty in permitting, equipping, staffing and marketing the coal is unworkable. Some CMM wells can produce for decades and have various decline curves. These factors can vary within a seam and between coal seams.

As written, section (e)1 applies to coal leased for both surface and underground mining, as opposed to section (e)(3), which is clear that it only applies to deep mining. Section (e)(1) would require degassing to "recover" the CMM "to the maximum feasible extent" regardless of the economics. The provision only requires "taking into account the economics of both the mining and methane capture operations." It does not say that if it is uneconomic then it is not required, even if it is "feasible." Placing the concepts of "maximum feasible extent" and "taking into account the economics" in the same sentence creates ambiguities, especially for a third-party expert, unless the law is clear that an uneconomic, stand-alone CMM business need not be operated.

The fact that the assessment of the requirement to capture the CMM should be made "taking into account the economics of both the mining and methane capture operations," creates a clear implication that one does not look only at the economics of the CMM operation to determine if CMM must be extracted. If one is to assess the combined, integrated economics of a profitable coal mine and an unprofitable CMM operation, then the requirement to extract CMM frequently may be in dispute, and complex issues (e.g., unpaid royalties) will always be unresolved. It is difficult to assess the economics of a CMM operation and a coal mine together as a single business enterprise. Among other things, different accounting, tax, Security and Exchange Commission segment reporting and other rules apply to oil and gas activity as opposed to coal. Most coal operators are not experienced in these areas.

Section (e)(3):

The concept that "prior to the issuance of a lease" a third party with expertise "in the capture of coal mine methane" will determine if it can be "economically captured and either put to productive use or flared" is simply unworkable. This process will add extensive delays to an already lengthy process of obtaining a federal coal lease in the current lease by application process. If the potential lessee does not agree with the conclusion of the expert, presumably this decision will be on appeal for several years before a lease is issued. Considering that gas prices have ranged from over $13/MCF to below $3/MCF in the past year, what if the gas price assumptions used vary during the period of this assessment and/or after the assessment is completed and before the lease is issued? Such delays are untenable in a system

that already requires many years to obtain federal coal by lease and permit those reserves to commence production.

If the economics of the integrated coal mining and CMM operation is to be assessed, as appears to be required by section (e)(2) as noted above, the expert has to be equally knowledgeable in coal mining and gas production. If the expert is to assess only the economics of the potential CMM operations, this expert needs to have expertise far beyond the capture of coal mine methane. The expert would need to understand property rights; the ability of the coal lessee to have access to the surface (keeping in mind that much of the surface over federal coal is controlled by the USFS); the hydrologic impacts associated with CMM extraction; the options and costs for disposal of water produced during production; the need and ability to process the gas to meet regional pipeline specifications; the costs to develop and operate gas processing or to transport the gas to third- party processors; the cost to access and use regional gas transmission lines; the long term pricing prospects for natural gas and the ability and cost to hedge those prices to justify investment in CMM; and many other factors.

Moreover, the techniques for drilling for and capturing CMM from coal in advance of mining are constantly emerging. Vertical wells drilled from the surface, horizontal wells drilled from the surface, horizontal wells drilled from within the coal mine, the ability to frac such wells and not damage the coal seam or otherwise adversely impact mining conditions of the floor or roof in the mine, and the ability to plug and safely mine through such boreholes are all constantly emerging technologies that vary between coal seams and even within the same coal seam. Moreover, what will and will not be allowed for operating CMM wells associated with coal mines are always subject to review and change by the Mine Health and Safety Administration as technology changes and experience is gained. It is unlikely that one expert has the capability to assess the numerous variables, all in a vacuum, before specific technical information on a yet-to-be-mined lease is obtained.

Section (e)(3) provides that this assessment shall consider whether the CMM can be "economically captured and either put to productive use or flared", although there is not reason to anticipate flaring to capture greenhouse gas could provide important offset credits discussed above. (Note: "recovery or flaring" is in Section (e)(4) as well.) In light of the considerable economic issues surrounding the capture and beneficial use of CMM, the expert also would need to have the skills to assess a complex and emerging market for carbon offset credits. To reiterate, due to the "additionality" issue such offset credits will likely not be available absent a clear mandate from Congress that they be included in any federally run carbon offset registry, if not private registries as well.

Section (e)(4):

Miner health and safety should be clearly stated as the controlling criteria regardless of "feasibility" or economics of extraction. Again, factors such as the ability to frac wells and the ability to plug and mine through well bores, are constantly evolving. The DOI itself is going to have to develop the expertise to assess these complex safety issues before making the determinations with which it has been charge under H.R. 3534.

Section (e)(5)

The federal government has and continues to control conflicting CMM and coal assets while leasing them out separately. This legislation should clarify whether the federal government will continue to issue separate leases and rely on the mechanism provided in this bill or consolidate the assets at the time of lease issuance. As to the proposed approach of dealing with a third party owning the CMM asset under this bill, the proposal to force the CMM owner to allow a federal coal lessee to extract such gas may raise constitutional issues.

NMA appreciates the opportunity to provide its comments for the record and looks forward to working with the committee coal and solid mineral issues related to H.R. 3534.

The CHAIRMAN. Let me begin my questions with Mayor Smith.

Mrs. LUMMIS. Mr. Chairman.

The CHAIRMAN. Yes, ma'am.

Mrs. LUMMIS. I have a letter that was submitted to you and Mr. Hastings as Chairman and Ranking Member, but I would like to——

The CHAIRMAN. Without objection, it will be made part of the record.

Mrs. LUMMIS. Thank you. It is from the Board of County Commissioners of Sublette County, Wyoming.

The CHAIRMAN. Without objection, it will be made part of the record.

[The letter submitted for the record by the Board of County Commissioners of Sublette County, Wyoming, follows:]

BOARD OF COUNTY COMMISSIONERS
Sublette County, Wyoming
P.O. Box 250
PINEDALE, WY 82941

September 16, 2009

Chairman Nick J. Rahall, 11
Doc Hastings, Ranking Republican Member
Members of the Committee on Natural Resources
U.S. House of Representatives
111th Congress
Washington, D.C.

Dear Honorable Committee Members:

Thank you for the opportunity to comment on H.R. 3534. Sublette County, Wyoming's land base consists of about 20 percent private lands, and about 80 percent public lands. Our economy is strongly dependent on the multiple use of public lands, including energy production, agriculture, and recreation. Energy production in Sublette County accounts for roughly 97 percent of the county tax base and resulting revenue.

The Sublette County Commission supports the need to streamline the federal planning process in a way that will more effectively promote efficient, responsible energy development. This legislation appears not to serve that purpose, but rather the opposite.

Along with the increased emphasis to develop renewable energy such as wind and solar, as well as increased demand for low carbon emission fuel, there will likely be an increased demand for natural gas.

Sublette County has been actively engaged as a cooperating agency with BLM during the planning process on all recent energy development projects in our county. Our goal in that participation is to try and insure that our energy resources are developed in a manner that effectively mitigates impacts to our other multiple use economies and protects our ability to maintain and enhance our economic diversity. We feel we have been successful for the most part in achieving that goal. As an example, Sublette County has and is working cooperatively with our energy developers, BLM, and other state cooperators, including the Wyoming Department of Environmental Quality to address ozone non-attainment issues. We feel we are being successful in that effort and within the next year we should have data to measure that success. We do not feel that adding more federal regulations will help in that process.

Pinedale Mayor Stephen Smith is attending this session to discuss his view of the legislation and the impacts of natural gas development in his town, one town in our vast county of nearly 5,000 square miles. We know that there are a wide variety of viewpoints on energy development in our county, and Mr. Smith's view is one, but is probably not in the majority. While Mr. Smith's view endorses the mandated use of "best management practices" for all energy development on federal lands, we know from experience that such a cookie-cutter approach doesn't achieve the desired results. Instead, we as a county commission actively work with natural resource agencies and with natural gas operators to address issues of concern, and are doing that now in partnerships where we monitor water and air quality, and impacts to wildlife populations.

Mr. Smith's letter included an attachment claiming to be a fact sheet about categorical exclusions, but that was far from a factual or impartial collection of information, and was in fact prepared by an environmental group in Wyoming that has fought energy development in our county. The fact sheet doesn't give an accurate presentation of the facts, and fails to note that while categorical exclusions are indeed commonly used in our local BLM office for processing applications for permit to drill, that is because the agency has already completed exhaustive environmental

impact statements for the development that is currently occurring. Categorical exclusions are used because the analysis has been made, and mitigation has already been determined, and because the proposed drilling falls within the narrow categories for such use.

For those wanting an honest assessment of the impact of energy development in a western county currently home to two of the largest natural gas fields in the nation, we the Sublette County Commission would be glad to provide further information.

The Sublette County Commission maintains that along with the need for the United States to become more energy independent, the congress needs to promote statutory and policy changes which will enhance responsible energy development and not provide unnecessary and unneeded roadblocks that only serve to make us more dependent on foreign energy.

Thank you for the opportunity to comment.

Sincerely,

William W. Cr mer, Chairman
John Linn, Member
Joel E. Bousman, Member

The CHAIRMAN. We are outnumbered now. We had better get on the ball.

[Laughter.]

The CHAIRMAN. Mayor Smith, this bill as you know would raise rental rates for oil and gas from $1.50 to $2.50 an acre. Are you concerned that such an increase of a dollar would stifle energy development in the Pinedale region and cost jobs?

Mr. SMITH. Mr. Chairman, I am not sure that it would or would not. I would make the comment very clearly that Sublette County is home to over 35 trillion cubic feet of natural gas, and from a personal speculation I do not see an energy bill walking away from that natural reserve.

The CHAIRMAN. Let me continue to ask you. Over the past three years the BLM Pinedale field office issued roughly 1,500 categorical exclusions to permit oil and gas activities more than any other field office. Yesterday the GAO issued a report saying that the BLM has frequently violated the law when doing this, and that such violations have, and I quote, "thwarted NEPA's twin aims of assuring that both BLM and the public are fully informed of the environmental consequences of the BLM's actions."

What has this impact have been on the ground is my question to you?

Mr. SMITH. Mr. Chairman, one of our most serious concerns when the town was submitting official comment to the BLM as a participating agency in the SEIS and RFP record of decision process was the pace of development. One thing that we have seen based on all the permits to drill with categorical exclusions is a very rapid pace of development. Our concerns initially and continue to be a slower pace of development in our community would give us the opportunity to plan for change and see what is coming down the pike, prepare our local infrastructure for what sort of growth we will see at a much slower pace of development.

Categorical exclusions have, among other things, certainly increased the rate of development in our community, which is a real challenge to us.

The CHAIRMAN. Appreciate that. You mentioned that your community dynamic has changed. The natural gas drilling has brought

challenges, and you mentioned several of those in your testimony: the air quality, water quality, the need to acquire best management practices.

Do you think that the BLM has appropriately balanced conservation with the need to get energy out of the ground in the Pinedale area? If not, do you think this legislation will help to reestablish that balance?

Mr. SMITH. If you are speaking of conservation as far as land and wildlife mitigation, I think the BLM has done an adequate job of that in the past. One of our major concerns is that there are no provisions within the record of decision from the BLM to look at the social and economic impacts of our community, those impacts that have affected those of us who live there on a daily basis.

The CHAIRMAN. Professor Squillace, excuse me if I mispronounced.

Mr. SQUILLACE. That is OK.

The CHAIRMAN. How much coal mine methane are we talking about where there is a substantial volume of natural gas currently being emitted from coal mines that we could be capturing?

Mr. SQUILLACE. Yes. I cannot give you numbers. I do not know the exact amount that is being vented. The only data that I have is from several mines in Colorado. There is this one mine that I mentioned, the West Elk Mine. There is another one about to be permitted very near to the West Elk Mine that will also I am told is going to be emitting or venting even more methane than the current mine, the West Elk mine is emitting, and this is a problem generally in underground mines because of the way that the coal deposits sit when they are deep underground. The pressure, somehow the pressure of being a deep deposit increases the amount of methane. And so when they develop any underground mine they have to vent.

In terms of total quantities, I cannot tell you exactly how much it is. I do know that in the east and in your State of West Virginia, and a number of other eastern states where the mining company owns both the methane and the coal, or owns the whole mineral estate, there are these joint developments going on. It can be done. It is being done, and I believe is profitable for the companies to do that or they would not likely to be engaged in that activity.

The CHAIRMAN. I am sorry. Did you submit any data for the eastern operation?

Mr. SQUILLACE. I did not, Congressman. I focused strictly on the Federal lands, but I certainly can find that and would be happy to submit that to the Committee.

The CHAIRMAN. I would appreciate it. Appreciate it. I have no further questions.

The gentleman from Washington.

Mr. HASTINGS. Thank you, Mr. Chairman. I have no questions of the panel but I do want to thank them for being here, and I will yield my time to the gentlelady from Wyoming, Ms. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman, and Mr. Ranking Member, and greetings from me to a former law school professor of mine, Mark Squillace, from whom I took administrative law at the University of Wyoming. In fact, when you were teaching there was an earthquake you may recall, and we were all about to drive

under our desks at the University of Wyoming, College of Law, when the earthquake finally stopped, but it was quite an experience. It is nice to see you again.

I would like to say to Mr. Hodgskiss that your testimony is music to my ears as a former member of the Wyoming Stock Growers Agricultural Land Trust where we worked with ranchers to hold over 120,000 acres of agricultural conservation easements. I was delighted with your testimony and thank you for being here.

My question are first for Mayor Smith, and Mayor, it is nice to see you here. Thank you for coming. While we certainly do not agree entirely on how to get there, we all agree that a responsible balance between energy development and other public land uses and protections is what this Committee is constantly striving to find. So, I deeply appreciate your willingness to attend today.

I might note that in the letter that I received and that was addressed to the Chairman and the Ranking Member, the County Commissioners of Sublette County, which surrounds Pinedale, have indicated that your letter and testimony include an attachment claiming to be a fact sheet about categorical exclusions, but it was far from a factual or impartial collection of information, and was in fact prepared by an environmental group in Wyoming that has fought energy development in our county. I am quoting from the County Commissioners' letter. "The fact sheet doesn't give an accurate presentation of the facts and fails to note that while categorical exclusions are indeed commonly used by our local BLM office for processing applications for permits to drill, that is because the agency has already completed exhaustive environmental impact statements for the development that is currently occurring, categorical exclusions are used because the analysis has been made and mitigation has already been determined, and because the proposed drilling falls within the narrow categories for such use,' and I further commend, Mr. Chairman, this letter to your attention.

My question, Mayor Smith, you made several points in your testimony about the financial costs of maintaining and repairing infrastructure in Pinedale and it has experienced tremendous growth due to energy development, and I agree that those costs can be very significant as a former member of the Land Commissioners in Wyoming who issues mineral royalty grants to communities, especially impacted areas such as yours, and when I sat on that board we issued numerous grants of Federal mineral royalties to your community. You have a magnificent new sizable state-of-the art aquatic center. I believe your library is the most fantastic library in the State of Wyoming. You have a magnificent senior and community center all paid for in large part by the mineral production, oil and gas production.

You did assert that the energy industry is passing the buck by not funding these improvements. Are the companies operating Sublette County not paying a sizable royalty on what they product and half of that money being returned to the state for the very purpose you describe, mineral royalty grants from impacted areas through the Board of Land Commissioners in addition to the taxes you receive?

Mr. HODGSKISS. Representative Lummis, thank you for the question, and good morning, ma'am.

Mrs. LUMMIS. Good morning.

Mr. SMITH. I will start first with the concerns over categorical exclusions. The county commissions and I are both on the same page as far as trying to do what is best for our community with socio-economic impacts. Regardless the source of categorical exclusions there is no denying that over 1,500 used in our small, very small Pinedale BLM field office alone, I do find that disconcerting.

Moving onto the resources we have in Sublette County, we do have a lot of very nice facilities. The Aquatic Center, which is paid for recapture from a school district. County commissioners have been very generous in funding senior centers. My wife works at the library, which is a tremendous facility.

That being said, it is not a matter of how we spend the taxpayers' monies that come back; rather, my opinion that socio-economic issues should be considered in records of decision for use on development of natural resources on Federal lands.

That being said, the Town of Pinedale last year, and our budget received under $300,000 of direct payment from mineral royalties and mineral severances, so how that system is set up for distribution of those funds are also of great concern to me.

Mrs. LUMMIS. And Mr. Chairman, shall I use the balance of my time now or later? Thank you.

In Wyoming, the revenue largely goes to the county, and as you know Sublette County is the wealthiest county in the State of Wyoming by virtue of the production of oil and gas in the county. So is part of the problem perhaps not the fact that the money goes to the county rather than the city?

Mr. SMITH. I assume that is a question for me.

Mrs. LUMMIS. It is, Mr. Smith.

Mr. SMITH. The way the mineral royalties are distributed amongst the state to the counties and the towns is a state issue. Those decisions are made, the formulas are set up by state statute. So, yes, that could be a situation we need to address at the state level.

The second attachment to my written testimony, if I may, was a letter from all elected official in Sublette County to the Governor of Wyoming outlining infrastructure requirements and things that we needed to address that are budgets were not allowing us to do.

Yes, there are, and I do not forget for a moment that oil and gas corporations are taxpayers as well, but going back to my original theory of we need to have those issues addressed in a record of decision for small communities that are impacted by drilling on Federal lands.

Mrs. LUMMIS. Thank you.

Mr. Chairman, with regard to the document you submitted for the record regarding categorical exclusions used by the BLM Pinedale office, the one that was referenced in the county commissioners' letter that says was prepared by an environmental organization raised several questions for me. So I contacted the Pinedale field office of the BLM to directly verify the data.

The Pinedale field office told me they found numerous inaccuracies in the document, particularly regarding assertions that the agency offices uses categorical exclusions to circumvent site-specific

reviews when issuing APDs or that APDs are posted for public comment, and do you standby the document you submitted?

Mr. SMITH. Representative Lummis, the document I submitted was more than anything a courtesy to explain categorical exclusions and how I view them within the Pinedale field office. Certainly we can differ on opinions on the source. Categorical exclusions have been a very serious concern for locals in my community as well, obviously, as environmental groups as they in some way circumvent the policies and requirements set forth by NEPA, and again I will stand firmly by the fact that I feel 1,500 categorical exclusions in three years is excessive.

Mrs. LUMMIS. Mr. Chairman, in spite of the fact that environmental impact statements were performed.

Mr. SMITH. Yes, ma'am, in spite of that fact.

Mrs. LUMMIS. Mayor, thank you so much for coming to Washington. I now have a question for my former professor, Mark Squillace. It is so nice to see you.

Mr. SQUILLACE. Nice to see you, Congresswoman.

Mrs. LUMMIS. What incentives do you think the bill provides for uranium exploration in Wyoming and the United States?

Mr. SQUILLACE. Yes. You know, I think that it certainly allows uranium development to occur in what I would consider to be a more orderly and a fairer fashion for the taxpayer. So, under the proposed legislation there would be a leasing program. There would be an opportunity for exploration as well. There would be an obligation to pay a fair royalty to the government if uranium is developed on the public lands.

So, that is the way all of our other fuel resources are developed on the public lands. I do not think the leasing process has unduly hindered that development, and it certainly could occur with uranium as well.

Mrs. LUMMIS. Mr. Chairman, another question for Mr. Squillace. You said in your testimony that cheaply developed uranium in Canada and Australia offsets the need to produce uranium here in the U.S. And my question is, does your cost analysis include the negative impacts to jobs and local economies that would hit Wyoming, which is the number one state for uranium production and uranium reserves in the U.S.?

Our local economies, how would they be hit should we drive this industry away to Australia and Canada?

Mr. SQUILLACE. Sure, a fair point. I do not think this is a question of driving the industry out of the United States. There actually is not very much uranium development in the United States. I believe that in Wyoming, north of Cheyenne, there is one in situ site that is I think the largest in the United States, and there are a few others in other places in the United States, but we develop only about 5 percent of the uranium that we actually use in the United States right now, and what has kept, I think, uranium mining out of the United States under the current regime has simply been the low price of uranium.

Now, it spiked as you know I am sure a couple of years ago, but it is back down to, I think 43-45 dollars a pound from being upwards, I think, of 140. So I think the price of uranium that has limited development and we have not seen a substantial amount of

development. I do not really think, I do not know the number of jobs that exists with uranium, but as I said, it is such a small amount of development of uranium in the United States that we are not talking about a lot of jobs.

Under the proposed legislation, these existing operations, to the extent that they are on public lands, would be allowed to convert. Again, because we are dealing with a hazardous kind of material, the leasing program would allow what I think would be better management of these resources and better assurance that we can reclaim the sites in a reasonable manner, and that is, as you know, been a problem with many of our abandoned uranium mines in the past.

So, I think that the bill certainly acknowledges the importance of developing uranium domestically if the market is there to do it, but it also acknowledges that in terms of our strategic need for uranium that we have friendly countries who are in a position to provide it if we cannot, or economically are not interested in providing it ourselves.

Mrs. LUMMIS. Mr. Chairman, Ranking Member, thank you very much for the opportunity to provide questions, and thank you, panel.

The CHAIRMAN. The gentleman from Washington and the gentlelady from Wyoming's time has expired, and we are catching up here.

I ask unanimous consent that two more letters be received.

[Laughter.]

The CHAIRMAN. And be made part of the record. One from John Leshy, Professor of Hastings College of Law, and the other one from the Wilderness Society.

Without objection, both letters will be made a part of the record.

[The information submitted for the record by John Leshy, Professor of Hastings College of Law, and the Wilderness Society, follows:]

September 16, 2009

The Honorable Nick Joe Rahall, Chairman
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Statement submitted on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009

Dear Chairman Rahall:

I appreciate your invitation to provide a statement on features of this legislation. I am sorry I am unable to attend the Committee's hearing in person.

I have read the testimony submitted by Professor Mark Squillace, Director of the Natural Resources Law Center at the University of Colorado Law School. I agree completely with his endorsement of the provisions dealing with coal mine methane capture (section 307) and making uranium a leasable mineral (section 511). I also agree with his suggestions for improvement, and I hope you will give them serious consideration.

Section 307 would provide the clarity needed to fix a technical glitch in current law. Controlling unnecessary greenhouse gas emissions is too urgent to the quality of life on the planet to let obstacles like this, which serve no useful purpose, stand. Requiring lessees of federal coal to capture the methane emitted as part of the mining process when it is profitable for them to do so does not substantial burden them; in fact, it provides benefits to them as well as to the public.

Making uranium a leasable mineral also makes eminent sense, for the reasons described by Professor Squillace, but I want to emphasize the importance of the transition rules for existing mining claims. Section 511 requires holders of existing mining claims located for uranium to apply for leases within two years of enactment, and instructs the Secretary to issue a uranium lease to the claimant if it demonstrates that "the claim was, as of such date of enactment, supported by the discovery of a valuable deposit of uranium on the claimed land." Section 511 goes on to declare all such existing claims null and void.

Holders of mining claims located for uranium may argue that this feature illegally "takes" their mining claims. In fact, however, by allowing valid mining claims to be converted to leases, section 511 protects whatever property interests exist in these claims.

"[I]t is clear that in order to create valid rights...against the United States [under the Mining Law] a discovery of mineral is essential." Union Oil v. Smith, 249 U.S. 337, 346 (1919); see also Cole v. Ralph, 252 U.S. 286, 296 (1920). It has also long been clear that the burden of proof is on the claimant to demonstrate a discovery. Consistent with this, Section 511 requires mining claimants to demonstrate a discovery in order to obtain a lease. By giving claimants the option to convert valid existing claims to leases, and declaring all other claims null and void, section 511 takes no property interest, because claims without a discovery are not property rights, but merely revocable licenses to occupy federal lands.

Mining claimants may argue that this legislation should instead simply protect "valid existing rights" in existing claims. The experience under the Mineral Leasing Act of 1920 shows why this suggestion should be rejected. When it was enacted in 1920, Congress brought coal, oil, gas, oil shale and some other minerals under a leasing system for the first time, but decided to grandfather "valid claims existent" on the date of enactment. See 30 U.S.C. § 193. Litigation over the extent to which grandfathered mining claims are still valid has gone on for almost ninety years, enriching no one but the lawyers. For a recent example of such litigation, see Cliffs Synfuel Corp. v. Norton 291 F. 3d 1250 (10th Cir. 2002). Section 511 would avoid this kind of unhappy legacy.

Thank you for the opportunity to submit these comments, and for pushing forward with legislation on these very important topics.

Yours truly,

John D. Leshy
[for identification only]
Harry D. Sunderland Distinguished Professor of Law
U. of California, Hastings College of the Law
200 McAllister St.
San Francisco, CA 94102

[The statement submitted for the record by The Wilderness Society follows:]

Statement of David Alberswerth, Senior Policy Advisor, on behalf of The Wilderness Society

The Wilderness Society appreciates the opportunity to submit this statement in general support of H.R. 3534, "The Consolidated Land, Energy and Aquatic Resources Act", introduced by Chairman Nick Rahall. Chairman Rahall is to be commended for once again focusing the House Natural Resources Committee's attention on a number of key problems that have arisen during the past decade in the administration of the Department of the Interior's oil and gas programs, both the onshore program managed by the Bureau of Land Management, and the offshore program managed by the Minerals Management Service. Chairman Rahall's proposal also sets forth a framework for moving forward with the development of wind and solar energy projects on the public lands. The Wilderness Society especially appreciates Chairman Rahall's call for full and dedicated funding of the Land and Water Conservation Fund. Our statement focuses on issues related to the onshore oil and gas program and the proposed solar and wind power leasing program.

Title I—Responsibilities of the "Office of Federal Energy Mineral Leasing"

Title I establishes a new "Office of Federal Energy Mineral Leasing" (OFEML), and defines its responsibilities. We have two reservations regarding the scope of responsibilities transferred to OFEML from the Forest Service and BLM. First, we think it should remain the responsibility of the two land management agencies to

approve lease tracts for sale. The two land management agencies will be more familiar with the areas proposed for leasing than will the new agency, both have established administrative mechanisms for resolving conflicts that arise from decisions to offer leases for sale, and both are in a better position to understand the "conditions of approval" that need to be incorporated into lease terms in order to accommodate various resource management issues.

For the same reason, we believe that responsibility for approving applications for permits to drill should continue to reside with the BLM, and not be transferred to the proposed OFEML (though the Committee may consider providing that authority to Forest Service for National Forest System lands). Since under the proposal the BLM apparently will remain responsible for assuring that the terms of drilling permits are fulfilled, and in fact will continue to have overall responsibility for overseeing exploration and development activities on the public lands, we believe that transferring drilling permit approval authority to the new Office would inevitably lead to unnecessary conflicts between the agencies, and confusion among the public and operators as well.

Separating these two mineral resource management decisions—leasing and drilling permit approval—from the rest of the multiple uses and resources for which the land management agencies are responsible raises the risk of having energy development become institutionalized as the dominant use of the public lands instead of one of their many uses. For example, an agency land use plan may identify an area as suitable for leasing. But five years later, when the land use plan still provides for leasing, conditions on the ground may have changed. Given the fact that OFEML's primary mission is to facilitate energy development on the public lands, it will likely not be as sensitive to this reality as the land management agencies. Nor is it likely that that OFEML will have as good a grasp of how to build "best management practices" into drilling permits. The bottom line is that OFEML likely will view its mission as expediting the leasing and drilling of public lands and national forests, and will not be as committed to the idea of balancing that mission with protecting and managing the other resources and values on these lands.

Title III—Oil and Gas Leasing Reforms

Aside from the concern outlined above, Titles I and III contain a number of noteworthy reforms in the federal onshore oil and gas program. For example, we applaud the inclusion of Sec. 101(f)(6) which essentially requires oil and gas operators to provide financial guarantees that cover the full estimated costs for restoration and reclamation. Current policies for assuring the timely and complete restoration of lands disturbed by oil and gas activities are woefully inadequate. Just as one example, the GAO has found that on Alaska's North Slope, the costs of restoration could reach $6 billion, yet existing financial assurances, such as bonding requirements, ensure the availability of only a small portion of the funds that are likely to be needed to dismantle and remove the infrastructure used for oil industry activities and to restore state-owned lands.

(Alaska's North Slope: Requirements for Restoring Lands After Oil Production Ceases, GAO-02-357 June 5, 2002.) The situation at the BLM is similar. Currently, BLM policy is to allow operators to post reclamation bonds as little as $25,000 to cover all surface disturbances in a state. Enactment of the provision will assure that taxpayers will not be stuck with the costs of cleaning up public lands affected by oil and gas activities.

With respect to the "diligent development" requirements set forth in Sec. 301, we recommend the addition of language that would limit the primary term of an onshore lease to five years from the present 10 years. Such a requirement would limit the opportunity for the speculative acquisition of oil and gas leases.

Section 303 requires public notice be given before leases and drilling permits are issued. Such a requirement will enhance the opportunities for public scrutiny and involvement in the leasing and permitting process. In addition, we recommend that language be added to require public notice prior to the issuance of lease suspensions as well. Sec. 304(b) requires that all federal oil and gas leases be issued via sealed competitive bidding. Such a requirement is likely to both enhance federal revenues from lease sales, and inhibit opportunities for the speculative acquisition of federal oil and gas lease tracts. We do recommend, however, that the "minimum acceptable bid" of $2.50 per acre be raised to $5.00 per acre, and that the rental rate set at $2.50 per acres in Sec. 304(c) also be raised to $5.00 per acre. These changes will both reduce the speculative acquisition of leases, and enhance revenues from the leasing program.

We also recommend that the base federal royalty rate for onshore oil and gas resources be raised from 12.5% to 18.75%, as the Obama Administration has recommended. According to the Government Accountability Office, "[T]he U.S. federal

government receives one of the lowest government takes in the world." [GAO-07-676R, Letter to The Honorable Jeff Bingaman, etal., May 1, 2007, p. 2] Raising the onshore rate to 18.75% would make the onshore rate roughly equivalent to royalty rates charge on recent offshore leases, and assure a fairer rate of return for the American taxpayer.

We are especially pleased with two provisions in H.R 3534 that relate to protection of environmental values on lands subject to oil and gas activities. The first is Sec. 306, which requires the BLM to promulgate "best management practices" to assure the "...environmentally responsible development of oil and gas on Federal lands in a manner that avoids where practical, minimizes, and mitigates actual and anticipated impacts to environmental habitat functions resulting from oil and gas development..." As an example of a new "best management practice" that should be implemented by the BLM, all operators on federal onshore leases who utilize hydraulic fracturing operations should be required to publicly disclose the chemicals they propose to use prior to approval of such operations. We also strongly support the repeal of Sec. 390 of the Energy Policy Act (EPACT) in Sec. 306. The BLM's problem-plagued administration of EPACT Sec. 390 is detailed in the forthcoming Government Accountability Office evaluation requested by Chairmen Rahall and Bingaman. In our view EPACT Section 390 is "too broken to fix", and should be repealed outright, as H.R. 3534 provides.

Title IV—LWCF

We support full and dedicated funding for the LWCF program as set forth in Title IV. The program should be funded at the $900 million annual level that Congress authorized when the program was created. Since 1965, over $17 billion in funding for LWCF has been diverted to other programs, and this bill would change that by finally dedicating the funds to their intended purpose. We wish to clarify, however, that we strongly oppose OCS development in inappropriate places, such as Alaska's Outer Continental Shelf.

LWCF is an effective and popular program that deserves full and dedicated funding because it is used to acquire critical inholdings within federally designated parks, refuges and forests. These lands provide a host of ecological benefits such as water filtration, erosion control, landscape connectivity, and important wildlife habitat.

As climate change continues to have a major impact on the landscape, LWCF should be used to conserve and connect large, healthy ecosystems and habitats to ensure that biological systems stay resilient. Providing opportunities for species to migrate or shift their ranges as temperatures and other conditions change is essential to the survival of plants, fish, and wildlife.

The LWCF has many economic benefits. The lands LWCF protect help ensure Americans have access to top-quality recreation opportunities. LWCF supports an American outdoor recreation economy worth $730 billion dollars a year. Approximately 1 out of every 20 American jobs are supported by outdoor recreation. In addition, these lands help promote a healthy tourism economy, increase property values in local communities, and contribute to a lowering of management costs on public lands associated with private land interests.

Title V, Solar and Wind

We are pleased that wind and solar leasing authorities are clearly tied to the Federal Land Policy and Management Act (FLPMA) and the National Forest Management Act (NFMA), rather than existing independently. While we believe DOI currently has the authority to lease lands for wind and solar development, we share the Committee's interest in improving the environmental review and federal authorization processes for wind and solar development on federal lands. Additionally, we think that an incentive structure should be created to transition current right-of-way holders into a leasing framework.

We recommend that language addressing mitigation and reclamation for wind and solar development be expanded to ensure sensitive wildlife and wildlands are safeguarded. Mitigation must start with responsible development of only suitable lands. The language should clarify that wilderness-quality lands, lands managed for conservation purposes, and important habitat should be avoided or excluded from leasing. Responsible siting is far more effective and efficient than attempts to mitigate impacts with compensatory approaches. Nevertheless, even in suitable locations there will be a host of unavoidable impacts. In Section 502(d), mandatory best management practices should be complemented by mandatory project-specific mitigation requirements, including habitat restoration and/or acquisition.

Likewise, we recommend that wind and solar reclamation should call for interim requirements. The useful life of a solar or wind facility is uncertain, but likely to

be more than 30 years, but the draft language does not require interim reclamation activities prior to completion of commercial activities. Section 502 should be revised to require the Interior Department to issue regulations that proscribe interim reclamation requirements applicable during the project's useful life.

To that end, we recommend that Section 503 should prescribe that some portion of revenues from wind and solar leasing be dedicated to funding conservation activities. Such a commitment of resources is appropriate given the sensitivity of ecosystems and species in the landscapes with the greatest renewable resource potential.

Title V, Subtitle B, uranium leasing—We support changing the status of uranium resources on public lands from a locatable mineral subject to location under the 1872 Mining law, to a leasable mineral, as provided by Sec. 511. The time is long past when valuable minerals such as uranium can simply be removed from our public lands without compensation to the owners of these resources—the American people. The one change we would recommend is deletion of lines 13 through 18 on page 61. We see no reason why judgments by the Secretary as to the fair market value of uranium resources should be withheld from public disclosure.

Title VII Misc Provisions—Interagency Consultation to Protect Wildlife

We support Sec. 701(b) and (c). Sec. 701 (b) repeals EPACT Section 346, which extended discretionary royalty relief authority to the Alaskan OCS. Sec. 701(c) strikes part of EPACT Section 347, specifically those parts that allowed for extension of NPR-A leases for up to 30 years and that provided for royalty relief authority in NPR-A as well.

Finally, our nation's 550 National Wildlife Refuges were established because they are areas of biological importance and provide stopovers for millions of migratory birds and wildlife habitat for countless species. Energy development, whether oil and gas exploration or solar and wind leasing projects, can threaten the health of migrating birds and other wildlife. Therefore, we recommend that the legislation be amended to ensure that the United States Fish and Wildlife Service be consulted during the siting, permitting, implementation, and oversight of energy projects on federal lands, particularly when projects are adjacent to or in proximity to a refuge, or may impact a migratory corridor, or may affect the status of species listed as threatened or endangered, or their habitats. Such an amendment could also reference needed coordination with the park service and NOAA. The Wilderness Society would like to work with the Committee on developing language that would ensure interagency consultation.

We look forward to working with the Chairman and the Committee on this important reform legislation.

Mr. HASTINGS. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. HASTINGS. In an effort to stay ahead, I ask unanimous consent that a letter from the Northwest Mining Association be made a part of the record.

The CHAIRMAN. Without objection, so ordered.

[The letter submitted for the record by the Northwest Mining Association follows:]

September 17,2009

The Honorable Nick 1. Rahall II
Chairman, House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Doc Hastings
Ranking Member, House Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Re: Legislative Hearing on H.R. 3534 -The Consolidated Land, Energy, and Aquatic Resources Act of 2009

Dear Chairman Rahall and Ranking Member Hastings:

The Northwest Mining Association (NWMA) appreciates the opportunity to provide the following statement to the committee.

Our comments on the legislation will be limited to Subtitle B -Uranium Leasing, contained in Section 511 of H.R. 3534.

Approximately 20 percent of the electricity generated in the United States is produced from nuclear power, and uranium is the fuel that creates this energy. Nuclear power is one of the cleanest sources of consistent and reliable energy available. The nuclear energy process emits only one greenhouse gas -water vapor. It also is important to recognize that the vast majority of the uranium used to fuel our domestic nuclear electric plants is imported from Canada, Russia, Kazakhstan, and other countries. We import more than 95% of the uranium we need in spite of the presence of significant uranium resources in several of the western states, much of it located on public lands.

Section 511 of H.R. 3534 is particularly troubling to the domestic uranium industry because it would permanently remove uranium from location under the Mining Law after two years following enactment of the legislation and make it leasable. We will outline below why this scenario is unworkable from an economic and operational perspective, will severely damage our national and economic security, and subject the federal government to substantial takings litigation.

Northwest Mining Association - Who We Are

NWMA is a 114 year-old non-profit mining industry trade association with offices in Spokane, Washington, and 1,650 members residing in 40 states. Our members are actively involved in exploration, mining, and reclamation operations on BLM and USFS administered land in every western state, in addition to private, land grants and tribal lands. Our membership represents every facet of the mining industry including geology, exploration, mining, reclamation, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-base membership includes many small miners and exploration geologists as well junior and large mining companies. More than 90% of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with locating mining claims, exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations.

H.R. 3534 Violates the Takings Clause of the Constitution

Section 511 of H.R. 3534 requires all uranium production to have a lease even if a claimant holds an existing mine with a valid discovery of a valuable uranium mineral deposit. The bill would:

- create a bidding system similar to coal and oil & gas leases;
- impose a 12.5% royalty;
- require an exploration license; and
- if the claimant has a discovery, the claimant must apply to convert his mining claims to a lease within one year or the claims will be deemed null and void; and
- mining claims converted to leases pay a 6.25% royalty for the first ten years, then 12.5%.

H.R. 3534 fails to contain provisions to protect existing uranium mining claims that were located under the Mining Law. While the bill does require the secretary to issue a lease for uranium claims that can show a valid discovery as of the date of enactment, it extinguishes the claim (and the claimant's rights under the Mining Law) by converting it to a lease. The legislation fails to include some type of valid existing rights language to protect pre-existing property rights from being impaired by subsequently enacted policy changes. By failing to take into consideration property rights relating to properly maintained claims established prior to enactment of the bill, the legislation will likely generate claims for a compensable taking under the Takings Clause of the U.S. Constitution.

More than 100 years of legal precedent clearly indicates that a valid mining claim under the Mining Law of 1872 creates property rights for the claim holder. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963). The courts have recognized that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes, which entitle claim holders to extract and sell minerals without paying any royalties to the government. Union Oil Co. v. Smith, 249 U.S. 337,348-349 (1919) ("If he locates, marks, and records his claim in accordance with [the Mining Law] and the pertinent local laws and regulations, he has...an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals, even to exhaustion, without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the

fee....") (emphasis added). The Federal Circuit has reached the same conclusion, and stated further that "[e]ven though title to the fee estate remains in the United States, these unpatented mining claims are themselves property protected by the Fifth Amendment against uncompensated takings." Kunkes v. United States, 78 F.3d 1549, 1551 (Fed. Cir. 1996).

Therefore, under existing law, the claimant of a valid unpatented mining claim has a protected property right in the fit/I value of the minerals it extracts from its mining claim. A royalty interest, which is commonly defined as a right to a fractional share of the minerals produced from the land, also is a property interest. Shell Oil Co. v. Babbitt, 920 F. Supp. 559, 564-65 (D. Del. 1996). Thus, by requiring a claimant to pay the United States a royalty of 6.25% of the gross value of the uranium produced from an existing valid unpatented mining claim, H.R. 3534 plainly and directly affects a legislative/regulatory taking of that property interest from the mining claimant without compensation in violation of the Fifth Amendment. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992); Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978). Further, because the imposition of the royalty obligation is on mining claims that already are in existence on the date H.R. 3534 is enacted, the effect of the new law would be retroactive, depriving the mining claimants of their due process rights under the Fifth Amendment. Landgraf v. Usi Film Prods., 511 U.S. 244 (1944).

Uranium is Different from Coal, Oil and Natural Gas

To argue that uranium is an "energy mineral" and therefore should be treated just like minerals under the Minerals Leasing Act denies the simple facts of geology. Furthermore, the royalty provisions in H.R. 3534 are so high as to render essentially all of the domestic uranium resources uneconomic. The points below describe in detail why uranium differs markedly from coal, oil and natural gas and.

- Coal, oil and natural gas are fuel minerals that are typically located in vast sedimentary basins such as the Powder River Basin, San Juan Basin" Permian Basin, or the midcontinental U.S. and Appalachians. Once an oil or natural gas well is successfully completed, it can produce with little or no additional effort other than insuring the well is in operating condition and functioning.
- Mines for uranium, gold, copper and other locatable minerals must be operated 24/7 and can't be walked away from like a producing oil or gas well can.
- Uranium deposits are small and difficult to locate, just like other hardrock deposits of gold, copper, molybdenum, cobalt or copper. Just because a uranium deposit may be discovered doesn't mean it is economical to mine because of ore grade, depth, metallurgical problems and additional geological or environmental constraints.
- Discovery, delineation and development of an in-situ or conventionally recoverable uranium ore body involves the same activities as those required for development of copper, cobalt, zinc, gold or copper ore bodies. Such activities typically require years of expensive fact-finding including ground, aerial and satellite reconnaissance; exploration drilling; environmental baseline data gathering; workforce hiring and training; mine and mill planning, design and construction; decommissioning and decontamination.
- Once a mineable deposit is identified, uranium ore requires additional extensive and expensive processing in the form of mining, crushing of the ore, separation and concentration of the U308. Further off-site steps include conversion to uranium hexafluoride, enrichment, conversion back to U02 and finally fuel fabrication. The in-situ process, while somewhat less expensive, still requires discovery and delineation of an economic ore body, mine planning and construction, recovery, separation and concentration, and all of the additional downstream steps of conversion, enrichment and fuel fabrication.
- Uranium may also be found as an IOCG (Iron-oxide copper gold) deposit, similar to Australia's Olympic Dam operation where by-product uranium is produced from a copper gold deposit. Such a setting speaks for itself -there's simply no similarity to a leasable substance such as coal, oil or gas.
- Unconformity Style deposits such as those in Canada's Athabasca Basin often form along structures which provide conduits for the mineralization to deposit in basement rocks such as granites, gneisses, etc. or at the contact with the overlying sediments or up in the sediments such as gold deposits, etc. With such deposits there is no comparison to oil, natural gas or coal deposits.
- However, unlike the large disseminated gold or copper deposits, uranium deposits are typically very small deposits in a real extent relative to the surface footprint. Unlike coal, oil or natural gas deposits, uranium deposits are drill intensive, thus easy to miss, and very close drill spacing is required, often less than

50' spacing. NOTHING about these deposits is comparable to oil, natural gas or coal deposits.

- Volcanic hosted deposits are similar to the Canadian unconformity deposits. These deposits are often hosted in veins such as those that host underground gold deposits, and are possible in New Mexico and Nevada. The Streltsovka caldera in Russia is a prime example. In addition, the mineralization may be hosted in various volcanic units that exhibit alteration such as is found in gold deposits or massive sulfide deposits. Again, there is NO similarity to coal, oil and natural gas.
- Quartz-pebble conglomerate deposits such as those found in the Witswaterand in South Africa are described where uranium occurs along with the gold and is produced as a byproduct of the gold operation.
- Roll Fronts are long, linear, discontinuous, narrow and sinuous ore bodies, and are very common in New Mexico, Texas, Wyoming and Nebraska. Such ore bodies are often drilled out on 25-50 foot centers and require a reductant such as a humate substance to cause the uranium to drop out of the fluids to form the ore deposit. Such deposits are unlike any known coal, oil or natural gas deposits.
- Alaskite hosted deposits are where uranium is disseminated in a granitic rock such as at Rossing in Namibia, Schwartzwalder in Colorado or Copper Mountain in Wyoming, forming bulk tonnages of low grades. For such deposits, mining techniques would be comparable to mining a large copper porphyry deposit.
- Uranium is a metal and is often mined with copper, gold and other metals. With the breccia pipe deposits, uranium commonly occurs with copper, nickel, cobalt, molybdenum, vanadium and a number of other locatable metals. To make uranium leasable, while the others mined at the same time are locatable, would produce regulatory and accounting confusion and would be unworkable from an operational perspective.
- In order to explore for and produce uranium, the same costly exploration, recovery and beneficiation techniques and extraction methods used for metals deposits are required. There is no similarity to coal, oil and gas or industrial minerals such as gypsum, gravel, etc. Uranium is a metal deposit just like gold, iron, copper, lead, zinc, etc., and should be treated as such.

Conclusion

Uranium is currently locatable under the Mining Law for a reason -because it belongs there. Previous Congresses have recognized the differences between uranium and coal, oil and natural gas. We urge this Congress to do the same and reject the misguided effort to make uranium leasable.

Provisions in Section 511 of H.R. 3534 will make the mining of uranium in the United States uneconomic, leading to the loss of good-paying jobs and a dangerous total reliance on foreign sources of a critical component of our nation's energy portfolio. If enacted, H.R. 3534 also will subject the federal government to substantial takings litigation.

As a nation facing increasing demand for energy, we must increase the capacity for all available sources of energy, including clean nuclear power. Now is not the time to erect barriers to the development of the resources necessary to ensure our energy future. H.R. 3534 is bad policy for this country that will unnecessarily cripple the domestic uranium industry and put our nation's economic and national security at risk. Section 511 should be deleted entirely from the bill.

Respectfully submitted,

Laura Skaer
Executive Director
Northwest Mining Association

The CHAIRMAN. The gentlelady from Guam, Ms. Bordallo, is recognized.

Ms. BORDALLO. Thank you very much, Mr. Chairman. Mr. Mann, I have a couple of questions for you, and good morning to all the witnesses.

Yesterday NOAA's written testimony stated that they could not support the Regional Outer Continental Shelf Councils or the strategic plans outlined in the bill because a comprehensive national approach to marine spacial planning must first be established, and

the Ocean Policy Task Force is already working on recommendations for such an approach.

I know that Pew has endorsed a comprehensive planning approach, but do you think this is something that can be achieved administratively or do you think legislation will be needed to address the likely resistance from Federal agencies who will need to change the way they do business? Should we let energy development and siting go forward with no planning process in place while we wait for the Ocean Policy Task Force to develop a broader planning proposal that may or may not be adopted?

Mr. MANN. Thank you for the question, Ms. Bordallo. Let me answer the last question first. No. We fully support the efforts of the administration to develop a national ocean policy and a framework for its implementation. That is consistent with the recommendations of both the Pew Commission, Pew Oceans Commission, and the U.S. Commission on Ocean Policy. The problem being that in the oceans you do not have a single landlord over any acre or square mile of land, and so because of that legal framework, which is not likely to fundamentally change, we need the agencies to work together under a national framework, and we need the Federal government, once it is better organized, to work with the states to provide comprehensive management for those marine ecosystems which for some reason just do not respect the jurisdictional boundaries that we have imposed on them.

Having said that, I do not think we are in disagreement with Dr. Lubchenco in that we support the goal of comprehensive management, but the administration can only do what it does under the authority of current law, and they can do quite a bit, but ultimately they will probably need changes in statutory law to more fully implement that.

In addition, with all due respect, I do not see the energy legislation being enacted within the next few weeks. I think there is plenty of time to work out any coordination needs with what the administration is doing and what this bill does, and if we are going to walk before we can run, the energy sector is a substantial use of the offshore, and providing better coordination for that use with more consideration of other ocean uses and users is a significant step forward that I think will contribute to the overall effort.

Ms. BORDALLO. Thank you. Thank you very much.

My second question to you, Mr. Mann, is, interestingly while NOAA stated that a comprehensive planning effort for energy development should be delayed until we have a national approach to marine spacial planning that addresses all activities in the ocean, they are moving ahead with the development of offshore aquaculture in a piecemeal fashion. They let the Gulf Fishery Management Council's plan go into effect with no over-arching Federal standards for offshore aquaculture in place with the vague promise of developing a national aquaculture policy at some point in the future, and with no clear explanation of how much a policy or the Gulf plan fits into their strict vision for marine spacial planning.

Would you care to talk about why a piecemeal approach to offshore aquaculture regulation is not OK, and what do you think the approach should be?

Mr. MANN. Thank you for the opportunity to again disagree with my good friend Dr. Lubchenco, and I think that disagreement is one of strategy and not of outcomes and goals.

In other words, the Pew Charitable Trust shares NOAA's goal of a strong and science-based national aquaculture policy, but we do not think that the way to get there is through the law designed to regulate fisheries management. It was not, as Chairman Rahall has articulated to both the administration and to the Gulf Fishery Management Council, Congress did not intend that law to regulate fisheries. There is some technical overlap perhaps in that if you have a fish on your boat, you know, you may need an exemption from the Magnuson Act to be able to take that.

But that does not in any way justify extrapolation to a full-on permitting and regulatory program for something that is very fundamental. Aquaculture is a form of agriculture. It is not to capture fish.

So, I do think that argument that you mention made by NOAA is a little inconsistent. They are endorsing a piecemeal approach for aquaculture at a time when we do not have a national policy, and we should have a national policy first, and I believe that will require legislation to establish.

Ms. BORDALLO. Thank you very much, Mr. Mann, for your straightforward answers to the question.

Mr. Chairman, thank you.

The CHAIRMAN. Because I allowed two timeframes be used in succession on the Minority side, I am going to do the same on the Majority side. Mr. Heinrich of New Mexico is recognized.

Mr. HEINRICH. Thank you, Mr. Chairman. I want to direct my first question to Mayor Smith, and I will put in a plug first because last time I was through Pinedale back in—it has been a number of years now—it is an absolutely gorgeous community, and one of the concerns I have because I spent a lot of time in my own state grappling with these issues has less to do with the development of the oil and gas as it has to do with the long-term impacts of fragmentation in places like the Jonah Field that you deal with and that we have similar issues in the northwest and southeast parts of our state.

I wanted to ask you if you had any suggestions or recommendations for best practices to address some of the needs for service reclamation and seasonal closures and other things that can allow for the development of oil and gas in a way that still protects both the natural resource for hunters and fishermen and recreationists, and also the economic resources that that provides. That is a sportsmen makeup, an enormous part of New Mexico's economy, and I can only imagine that the same is true in Wyoming.

Mr. SMITH. Congressman, thank you both for the compliment and for the question.

In the Jonah Field on the Pinedale Anticlines there has been serious mitigation efforts made, first of all, for population studies on mule deer as well as sage grouse habitat along those lines. The industry has stepped up quite valiantly actually in funding some of those mitigations both at BLM and the Governor's request, and quite frankly, I think they have done a pretty good job.

One thing that the operators, there are three operators on the Pinedale Anticline, which is a proposed 4,000 well development, they have worked creatively to find a way to cooperate and to explore and produce in groups. In their work, they will work in one specific area of the geographic location, develop that without interrupting migration, and then once that exploration has concluded, they will as a group them move in a cooperative effort so that the migration routes are not affected. I commend them for that and that has been good work.

The economic development out of Pinedale is a great bonus for us. Again, I am not here to advocate for or against energy. This is a resource that we really have benefitted from over the last few years.

Wildlife mitigation has been taken seriously, and we are happy to have seen that.

Mr. HEINRICH. So phased development within a general leasing area is one of the things that you think is really worth taking a lesson from?

Mr. SMITH. I do. That is something fairly original that I think has come up, and the industry for the most part has done that themselves. They made proposals during the SEIS on the Anticline that they would move forward with that sort of phase, and moving along geographically in the area, and they are sticking to their gun, and it seems to be working.

Mr. HEINRICH. Thank you, Mayor.

Ms. Brian, I have a couple of questions for you, too. I was going to ask you if you thought that the Royalty In Kind Program was simply unreformable, but when you said quote/unquote "stake in the heart of RIK" you made your point on that.

Ms. BRIAN. Point on that, yes.

Mr. HEINRICH. But I want to drill down a little bit, forgive me the pun, but I am curious as to—you know, I am very familiar with the problems with the program, and I certainly think it has to be reformed, but the question I have is are the problems really a matter of—are they structural, or it seems to me it is just bad management, lack of clear ethics lines? Is there something fundamentally wrong with the idea of accepting product, oil and gas, rather than currency for royalty payments?

Ms. BRIAN. Well, thank you for the question, and the opportunity to discuss RIK.

Ultimately the reason the Royalty In Kind Program was created was in order to reduce the burden essentially of auditing. The idea was that this was going to be saving money because we are shrinking essentially the government bureaucracy that is looking into auditing the leases. But what ends up happening over the years GAO has found we have never been able to be sure that actually we—the taxpayers are actually making money and having any confidence that royalties are being reflected in the manner that they should be reflected. So in the end the only way to reform it is to bring back the auditors to determine whether we are getting any royalties which the obviate the whole point of royalty in kind in the first place.

Mr. HEINRICH. Well, I think from that perspective if you articulate it that way I would agree. But what I have heard from a num-

ber of small independent producers is that they simply do not have the capital to be—you know, it helps them develop without having huge capital reserves, and that is a separate problem from the idea of just saving on the auditing from the Federal government side. So that is one of the issues I have is if we had a program that actually was doing the taxpayer right in terms of making sure that the product was being provided, it was being provided at the right cost in full, et cetera, would there be—is there still a problem with the idea of utilizing product in kind as opposed to currency?

Ms. BRIAN. No, it is not the concept of it being in kind as much as the fact that the way the system has operated has been totally nonfunctional.

Mr. HEINRICH. One last thing. The IG's investigation, you know, given the nature of the inspector general, do you think that royalty auditing is really appropriate for that office or would you recommend it remain part of the operation and mission of the new agency that is created to oversee these things because I see the IG's role as more of, you know, once somebody gets in trouble their job is to investigate?

Ms. BRIAN. Yes. I mean, I have a Solomon's choice on that one because I feel very protective of the integrity of the inspector general's office as well, and this is a little bit awkward from our perspective because we want the IGs to be able to actually review whether those offices are appropriately auditing. However, keeping it within the same organization, even if they are split off, they are still ultimately reporting to the same people within the Department of the Interior and creates still that tension of having people who really want to make it look like they are doing well rather than whether they really are doing well in recoveries.

So, in my perfect world actually the IG would be a short-term solution. POGO has found a number of agencies that have problems with their auditing functions, and we ultimately are hoping to see the Federal auditing agency that be created that would be dealing with GSA and DOD and many other agencies audits that would be independent from those agencies, but until we have that I think it is proper to staying in the IG.

Mr. HEINRICH. Thank you, Chairman. I yield back.

The CHAIRMAN. At this time without any fanfare or drum roll the gentleman from Utah is recognized, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman. I know you sat me between two microphones for a reason.

Could I just inquire as to the number of letters on the letter game? Are we behind on unanimous consent? Because I could write one right now if you want me to.

The CHAIRMAN. You are ahead. We do not need yours.

Mr. BISHOP. OK.

[Laughter.]

Mr. BISHOP. I only have two quick questions. Mr. Mann, if I could, just for you. I was intrigued yesterday when the Secretary discussed one of the advantages of wind power on the outer continental shelf was its proximity to areas of demand. Was he accurate when he said the proximity was one of the benefits for development of the OCS for wind power? Again, your opinion, obviously.

Mr. MANN. I will give you the best answer I can on that, Mr. Bishop. I am not an expert on offshore energy product, but, yes, I believe that is what he said, and I agree with it, but if you have an area with a good wind field to produce the energy, the issue with renewables always seems to be getting it to where the users are. So, depending on where the resource is, it can be very good potentially on the east coast with the high population density, and a relatively shallow continental shelf where you can develop wind quite a ways out.

In other less populated areas, it probably would not make sense to develop that resource because the loss of transmission would diminish the return on that.

Mr. BISHOP. I thank you for that answer, and I appreciate it because it presented at least a question in my mind and I guess I could ask you the next one with that. Do you believe the development of natural gas on the outer continental shelf of the Atlantic, which is certainly closer to Trinidad, or Venezuela or Egypt where we are presently importing liquid natural gas through Atlantic ports, would have the same and a similar benefit to the United States?

Mr. MANN. As I testified, we are not opposed to development of offshore mineral sources, whether it is natural gas or oil and gas. I think the challenge there is the difficulty of separating natural gas production from oil production, and I know there has been a lot of talk of it up here by people who know much more about it than I do, but I am not aware that you can truly separate that, and producing either has environmental impacts.

So, you know, I think the point of my testimony today was not to try to tell you where, when and how offshore resources should be developed, but to advocate a process that allows for decision-making on a regional basis that takes better account of the users and uses of those resources and tries to come up with a plan that is more durable both politically and environmentally, you know, on a regional basis to advise the Secretary.

Mr. BISHOP. I thank you for coming through with that clarification there. It is, I think, interesting, especially for those in the West who are dealing with alternative; not necessarily alternatives but supplemental energy sources that proximity is indeed one of the questions we have to deal with.

With that I will allow any extra time I have to go to Ms. Lummis for her last speech. I am trying to catch up here.

The CHAIRMAN. The gentlelady from New Hampshire, Ms. Shea-Porter is recognized.

Ms. SHEA-PORTER. Thank you very much.

I am very interested in Pinedale because I think Pinedale is a case study. We know that we are going to have to continue to find our resources to fuel our engine requirements, but I would like to talk about Pinedale if you will, please, because the conversation that we had previously where they were talking about the letter from the Sublette County Commissioners and you have your material from an environmental group, and I would say that each has its place there, and so I am happy that everyone is engaged in this conversation. It is also nice to hear my colleague praise Federal

grands and funds, and I am happy that your community has received some benefits along with the sacrifices, Mayor Smith.

But could you talk to me about what was your population before the big discovery of natural gas, and what is your population now?

Mr. SMITH. Thank you for the question, and again, of course, I am always happy to talk about Pinedale.

Our population in the 1990—correction—in the 2000 census in the municipal limits of Pinedale was almost exactly 1,400 people. Our best guess now with our socio-economic analysis of the county is we may be at 1,600 to 1,800 people in the municipal limits alone.

Ms. SHEA-PORTER. OK, and 1,500 categorical exclusions you mentioned, right?

Mr. SMITH. Yes.

Ms. SHEA-PORTER. What would you expect to find? Is there a normal range that you get out of the BLM?

Mr. SMITH. In our area we really have no reference. There wasn't a tremendous amount of permitting allowed before this boom in Sublette County. As far as the ratio of other communities' experience, I am not sure, but I do know that the field office in Pinedale is more in Fiscal Year 2008 than in any other BLM office in the nation.

Ms. SHEA-PORTER. OK. And you are counting Sublette County?

Mr. SMITH. Sublette County, yes.

Ms. SHEA-PORTER. And I was looking at the letter and I was surprised to hear that, I guess you are all in this letter together, and the letter states to the Governor, "Although our community has benefitted enormously from energy development, our list illustrates that the costs of maintaining infrastructure and public services have outstripped our ability to fund these necessities. The towns in particular are disadvantaged in funding infrastructure needs."

Can you talk to me about those infrastructure needs? I read that you have some problems with your water. You have problems with air, and you said the Wyoming Department of Environmental Quality has been active in monitoring your air quality. Could you talk a little bit more about the problems and why the county agreed with your statement that the town, and your town is having trouble keeping up with the changes?

Mr. SMITH. Yes, and again, thank you for the question.

The letter to the Governor was signed by all the elected officials in Sublette County, the mayors of each of our three towns, as well as each member of the commission. We had approached the Governor regarding identifying some of the impacts that we have, and in that letter we specifically identified the needs specifically of each town as well as the county commissioners needs, which I think the request was around $32 million for a shortfall and building a road that they needed.

As far as our water quality goes, we have no real concerns about our drinking water. Our main concerns in Sublette County based on the residents that I have visited with are questions over ozone. We have had multiple issues of ozone occurrence in the county in the last three years. In a very rural county we have exceeded the Federal standard of 75 parts per billion on numerous occasions, going as high as 122 parts per billion, and keep in mind this is a rural community. This is not Los Angeles, Chicago, or New York.

We have less than 8,000 people in the county, we are having ozone leaks. That prompted citizen groups to be created, to come to the state and Federal level with their concerns.

There are specific infrastructure needs that I could go onto. Just in Pinedale we identified some road projects, Big Piney had, I think, a water or sewer project. There are multiple projects that we identified in our letter to the Governor.

Ms. SHEA-PORTER. Just to summarize it, when you have this growth you obviously have problems within your community, and again I would like to repeat the line that your county wrote with you, "Although our community has benefitted enormously from energy development, our list illustrates that the costs of maintaining infrastructure and public services have outstripped our ability to fund these necessities."

So we all know and we understand that we are going to have to continue to develop energy. What would your message be to the communities that will be the next communities, and what do you want us to do for them as well as for yourself as we continue to develop our sources of energy?

Mr. SMITH. For future small communities that are expected to be impacted by this sort of rapid development and very large development, first of all, become a participating agency with your local BLM office. That gives you the opportunity to submit official comment to them for their record of decision.

Second, make sure you address in writing your concerns about potential social and economic issues, not specific to wildlife or lands or reclamation, but to the people of your small community because guess what—your lives are going to change and are going to change very quickly. So you best insurance is to get out there, make sure your concerns are known. Talk about view shed, talk about schools, talk about increase in crime.

Ms. SHEA-PORTER. So, what we are talking about is responsible energy development, keeping it in mind the needs of the community and the people, the taxpayers of this country who just want to maintain their quality of life as much as possible while we also develop energy.

Mr. SMITH. That is exactly right. We need the energy. We need it for local economies, state economies. We need it for the national economy, national defense. But at the same time we have to take care of the small people on the ground in these small communities.

Ms. SHEA-PORTER. Thank you, and we are trying to hit that balanced approach. Thank you, and I yield back.

The CHAIRMAN. The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. We are taking up some matters here that clearly have past. Once again we will make our natural resources more difficult in some of these areas to procure, and it is really astounding.

Ms. Brian, I appreciated your comment that you felt torn, you needed to protect the integrity of the IG's office, but based on some hearings we have had in the last couple of years you can be comforted. I do not think there is that much integrity to protect there, so you can find comfort there.

Ms. BRIAN. I think they are pretty good.

Mr. GOHMERT. Yes, exactly. We had hearings on the 1998 and 1999 deep water leases that were leased during the Clinton Administration, and which the Federal government lost $10 billion because they did not put the price thresholds in there as most any people with some sense in the area would have done, and the Inspector General, Mr. Devaney has been up here and testified, and on questioning he never really got to the bottom of why that was left out even though either it was gross negligence or something even more sinister, and the last report we had was that the people that really knew what happened had left government service, so they really couldn't be questioned.

Well, good news on that front. We now know that one of the two primary people involved in that gross misconduct, whether it was negligence or intentional, is now the new deputy director of mineral management service, so good news there, and the other has now been named Deputy Assistant Secretary of Land and Minerals Management which will oversee mineral leasing. So good news there, you know.

And, of course, the Inspector General that came up here and testified that they had not gotten to the bottom, and then later you talk to those people and they have left government service. Well, fortunately, a man that was able to get to the bottom of it and not be able to find what the problem was is now in charge of the $787 billion stimulus package, so we can be comforted there.

Mr. Mann, you mentioned that you know that there have been people who have come up here and testified who know a lot more about the oil and gas separation issue than you do, but I wanted to thank you for being willing to weigh in there on that issue even though you did not know as much as they did.

Mr. MANN. Always willing to lend——

Mr. GOHMERT. Sure, appreciate it.

I had some people I was visiting with from China. There is just so much here to cover, there is no way to cover it all, but we are continually making it more and more difficult to get our own energy resources, and you know, for example, the royalty in kind issue. You know, there were some problems. As a law and order judge, I believe if somebody has done something wrong you go after them. That is not what we are doing here. We are going to eliminate the program. Instead of fixing the ethical problems and allowing the program to continue and making sure it is adequately supervised, a program which actually raises millions of dollars in additional revenues that we would not otherwise get, instead of fixing it, going after the ethical problem, we are just going to eliminate it. And you know there have been some benefits among people who have dealt with this issue ethically, do you not, Ms. Brian?

Ms. BRIAN. Congressman, one of the statements you made there I just want to clarify where you said that RIK was actually providing royalties that we would not otherwise have. We do not——

Mr. GOHMERT. No, no, I did not say royalties it would not otherwise have. It was money that we would not otherwise have. There is a distinction because the government was able to make money from some of that oil that they otherwise would not have been able to make.

Ms. BRIAN. Well, the GAO has repeatedly for years said that we actually cannot tell how much we are losing or making from the Royalty In Kind Program——

Mr. GOHMERT. Right, that is the government.

Ms. BRIAN.—because they are not providing any information.

Mr. GOHMERT. Well, there are smarter people than the g people who have figured out it has actually made some money.

Ms. BRIAN. I think those were industry people who have been benefitting from this.

Mr. GOHMERT. Well, I appreciate that, and again, you say you think the government people think, but again the problem is when there is an ethical violation, you fix that. But I see—I will only ask for about tenth as much time over my five minutes as we have been getting.

But I had some Chinese visitors here and they said, you know, we have been seeing you constantly bringing up legislation in the last couple of years that make it more and more difficult to use your own natural resources. And since they think in terms of hundreds of years instead of tomorrow, they said, we have been trying to figure out what you are doing. We figured out what you are doing in your government. You are putting your resources where they are harder and harder to get so that the rest of the world will have to use up their natural resources, and then when everyone else is all used up you will be the only superpower once again because you will be the only one with resources.

And I said, you know what, I wish I could tell you that we think that far ahead like you do, but we just do not give it that kind of thought, and I sure do wish we would. There are ways that the environment can benefit because when we hurt the economy as we saw last summer, unfortunately people quit caring about the environment because they are so worried about getting their gas tank filled, and I hate to see the environment hurt the way it does and the way it is when we keep making it more and more difficult to get our resources, our people have to pay more, the economy gets in trouble. And so I would just encourage, keep an open mind, keep in mind that poor single moms that have been hitting me up when gas prices get high, the 80-year-old lady that says, I am not going to be able to afford propane and electricity anymore, I am not sure that I want to end my life with a wood stove the way I started. And I had to assure her that because of cap and trade she may not be able to have that wood stove. I yield back.

The CHAIRMAN. I am not sure who that all was directed at, but does any member of the panel wish to respond?

Ms. BRIAN. If I could just——

The CHAIRMAN. Sure.

Ms. BRIAN.—just as I assume a fellow fiscal conservative, Congressman, I would just remind you that royalty collection is essentially the second largest source of revenue for the taxpayer after taxes themselves, and that is why we have to jealously guard to make sure that the taxpayers are getting as much royalties as possible from our natural resources.

Mr. GOHMERT. But you understand the legislation we are taking up is going to create the ability for far more litigation than we have

had in the past. You do see that potential in this legislation, do you not?

Ms. BRIAN. That is not something that is in my universe of working on royalty.

Mr. GOHMERT. Well, as a——

The CHAIRMAN. the gentleman's time has expired.

Mr. GOHMERT.—former judge, I assure you it is there.

The CHAIRMAN. The gentleman from American Samoa, Mr. Faleomavaega is recognized.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I have been listening with tremendous interest in terms of the dialogue and the sentiments that have been expressed about this very important bill. And I do want to thank you for your leadership and initiative in introducing this legislation which I feel very strongly if I sense exactly the basis of the heart and soul of this bill is to establish not only less dependence of our country to foreign energy sources, but also to make sure that the environment is protected as well. So a balance approach is what I look at in this proposed bill, and I just wanted to ask a couple of questions here with the members of our panel.

Professor Squillace?

Mr. SQUILLACE. Squillace.

The CHAIRMAN. Squillace. I noticed with interest, and it is something that is very dear to my heart, you mentioned here in your statement and I quote, "Uranium mines pose significant truth and safety hazards as shown by the tragic legacy of the Navajo Indian Reservation where mining authorized by the Department of Energy contaminated water supplies that led to a dramatic rise of incidence of lung cancer, especially among Indian miners."

I would say that that is a real sad legacy of the history of uranium mining in our country's history.

Can you elaborate a little bit further, other than the Indian, the Navajo Nation, were there not other Indian tribes whom we leased their lands that had uranium, and to this day their lands are still polluted, or you might say contaminated to the extent of what we have done to these people?

Mr. SQUILLACE. I think that the Wallopi in northern Arizona have also had some uranium development on their reservation, but the primary development has been in New Mexico on the Navajo reservation, a very large reservation as you probably know. About a quarter of the United States uranium reserves, the discovered reserves are on Navajo lands, so they are host to much of the uranium that we have in the United States.

But because of the legacy of the past abuses by uranium mining, and despite the fact that they are very willing to promote energy development of other forms on their reservation, including coal, they have as a government and certainly as local people are adamantly opposed to any new uranium mining on that reservation. If you talk to Navajo people, most of them know someone who has died from lung cancer. The uranium mining that was done results in releases of large amounts of radon in the mine. The people that are sent down in the mines, usually native people, down into the mines have had exposures far in excess of government levels, and they are still facing the legacy from that experience.

There was also a dam at Church Rock, New Mexico, that burst, I believe it was in 1979, that sent down 93 million gallons of radioactive contaminated water into the Rio Puerco River, and about 1 percent of it was cleaned up after the operation.

So it is these kinds of incidences that have led the Navajos to oppose new mining, and it is part of what leads me to think that a leasing program would allow us to do better planning. If we are going to allow it, we are going to need to decide where it is appropriate, where we are not going to unduly impact people. And if we are going to allow it, we need to be sure that the environmental impacts of that operation are addressed in a careful way.

Mr. FALEOMAVAEGA. Do you think perhaps this legislation should also address some kind of restoration efforts on the part of the Federal government to restore and to reconstitute the needs of these people in terms of not only health-wise?

Mr. SQUILLACE. I believe there is some legislation that has been considered over the years by Congress to address and re-mediate the problems that the Navajos have faced, and also Congressman Rahall has other legislation, as you probably know, dealing with mining law reform more generally that would set up an abandoned mine reclamation program that would allow a fund to be developed that would provide money to reclaim some of these lands. So there are some initiatives that have been taken by Congressman Rahall and others to try to address these problems. Unfortunately, they really have not been enacted yet.

Mr. FALEOMAVAEGA. I know a little bit about nuclear. Well, you mentioned uranium, you are talking about nuclear energy as well. What is your best opinion? Should we redevelop nuclear energy as a major portion of our efforts to become energy independent?

You know, currently we are importing over $700 billion worth of oil from foreign countries. Do you think that maybe nuclear energy could be part of that solution to the problems we are faced with our energy needs?

Mr. SQUILLACE. Given the challenges that we are facing with respect to climate change right now, I think all forms of energy ought to be on the table. We need to look at things like uranium and nuclear power development. There are some new generation kinds of nuclear plants that many people think are a better design, and they are safer, and would allow for appropriate development.

But obviously it raises some significant challenges as well. Despite the fact that we have passed legislation in 1982 to deal with uranium waste, we still do not have a permanent disposal site for uranium waste, so there are some challenges dealing with uranium development. I think though that uranium development and nuclear power should be part of the mix or at least on the table for discussion.

Mr. FALEOMAVAEGA. I just want to know—I know my time is up, Mr. Chairman, but just a quick note that I was recently invited by the government of Kazakhstan to go there, and to go to Ground Zero where the former Soviet Union exploded its first nuclear bomb in 1949. Guess what? That place is still contaminated. But the horrors of all this is that after the former Soviet Union conducted 450 nuclear bomb testings in this place, Kazakhstan, 1.5 million Kazaks were exposed to nuclear contamination, and to this day be-

cause of abnormality in genetics and all of that, jelly babies, deformed human beings come out, the worst example, if you want to talk about nuclear use, and you mention about uranium, I think Kazakhstan has about 25 percent of the world's supply of uranium as well.

I will wait for the second round. I have not even gone to Mr. Pew—Mr. Mann who represents the Pew organization. Mr. Chairman, I will wait for the second round. Thank you.

The CHAIRMAN. The gentlelady from California, Ms. Capps.

Ms. CAPPS. Thank you, Mr. Chairman, and thank you to this illustrious panel of people from very notable areas of expertise. I want to address two quick questions to Mr. Mann, if I could, and then a question to the rancher on the panel. I have a lot of ranchers in my district too, and I appreciate you being on the panel.

Mr. Mann, as you know, my district has a long history off the coast of California, both offshore and onshore development. When the first offshore platform was drilled in 1896, we did not realize then the legacy that would be left that is pretty hard to clean up, and now off our coast and on our public lands many of our constituents and I and others are prioritizing clean renewable energy like wind and wave and solar as exciting opportunities for the future.

We are talking about smart development, and given the overwhelming need to get renewables on the ground or in the water as soon as possible how do we know how to plan in advance to mitigate for some of the conflicts, some of the problems that we do not anticipate now but that very well could be there in the same way that the history has shown us in the past? How can we ensure that deployment of renewables is done strategically while also preserving critical habitat, realizing that our oceans and our public lands as well we have great needs for energy use but we have a lot of other needs to be protected that those resources offer to us as well?

Mr. MANN. Well, you know, I guess that the 64 billion dollar question, but let me just start by saying that we appreciate that fossil fuels are going to be part of the mix for some time to come.

Ms. CAPPS. Yes.

Mr. MANN. I think that is not the question.

Ms. CAPPS. No.

Mr. MANN. The question is can we begin the necessary transition to a renewable and sustainable energy economy because if we do not addressing the long-term concerns that Mr. Gohmert brought up, we will be in trouble for the long term from the effects that are already evidence from climate change and the damage it is going to be causing to——

Ms. CAPPS. I totally agree with you on that. I am only bringing this issue, and maybe you are getting to it.

Mr. MANN. I will.

Ms. CAPPS. OK.

Mr. MANN. And I will try to get to it quickly because I know it is your time and not mine.

We do not know all the impacts but we do know some, and the way we believe that we need to do it, at least for offshore energy production, is to consider—is to get a good assessment in hand of

what the resources are, not just energy but living resources and the uses.

Ms. CAPPS. Right.

Mr. MANN. It is kind of a mapping exercise. What are the uses in a region, and think about it, and discuss it with the community, both the users and the public desire.

Ms. CAPPS. Right.

Mr. MANN. And try to come to some conclusion about the best balance of resources on a regional basis where people have the actual—you know, it should not be done in a centralized way from Washington and decisions imposed. It needs to be done on a regional basis where people have a connection and will live with the consequences of those decisions.

Ms. CAPPS. Right.

Mr. MANN. I hope that addresses your question, and that needs to be formalized. Now, the administration is working on doing that, creating an administrative process to do that and we are very excited to hear the results of that, and I understand we are going to get some information on that today.

Ms. CAPPS. Right. I am just laying out as well as part of that is anticipating that in advance when you do these things you do not know all of the details of all they are going to interplay, that you keep this kind of conversation going of how one desire, one goal sits alongside others.

Mr. MANN. And that is why I think this needs to proceed in a multi-year planning process that is reviewed and updated periodically. The management needs to be adaptive. We address the concerns as best we understand them now, and later on if there are more concerns that needs to cycle into it, but it does not mean——

Ms. CAPPS. Right.

Mr. MANN.—the application of caution does not mean that you go forward at all.

Ms. CAPPS. No, I totally agree with you. There is an urgency about doing this, but I think we have to learn that we can do more than one thing at one time, and do them well.

You have kind of answered my second question, but maybe you will just make it formal. I have been a strong supporter of regional collaborations, and that is what you are kind of referring to, such as the west coast Governors on ocean health. As you know, the CLEAR Act provides funding to regional ocean partnerships. These kind of partnerships are considered by both ocean commissions—by both ocean commissions to be crucial to addressing the management of human activity on our oceans.

Elaborate just a little bit more on why regional ocean partnerships are so important. What role, in particular, do they have to play as we move forward with marine spacial planning?

Mr. MANN. Yes.

Ms. CAPPS. Yes.

Mr. MANN. Thank you. The challenge with truly protecting the health of our ecosystems, as I said in answer to an earlier question, is that there is not a single landlord out there. You know, the public owns it so to speak.

Ms. CAPPS. Right.

Mr. MANN. But no one agency has complete control over the real estate, and this is why—you know, I do not know if it is applicable on public lands.

Ms. CAPPS. Right.

Mr. MANN. But in the ocean far smarter people than me have looked at this and come to the conclusion that we need to get these various resource management agencies together and get their decisions aligned in that adaptive way that you spoke of, and again because of control over the different areas the states' control is much smaller in area, but I think in the perception of most people and in the reality of biology it is some of the most important areas both in terms of economic and environmental resources the states are a critical partner. Congress has given them control over waters out to three or in some case nine miles. Once the Federal government is organized better they need to be brought in as well, the states, if we are going to have a truly more comprehensive form of ocean management that can deal with all the uses that are going on out there.

Ms. CAPPS. Thank you very much. I know my time has expired. Can I ask—I do not want to leave out the very important role that people who live who really understand the land, as ranchers do, the perspective. I wanted to ask your perspective, Mr. Hodgskiss.

In my district, I have seen firsthand how conservation elements benefit our ranches and our environment, both together, not one pitted against the other, but very much a partnership. You described in your testimony how these elements can work to strengthen your local economy. That is something that oftentimes is not perceived to be a part of the same sentence. You know, that that could be a positive thing for the economy as well as protection and enhancement of resources.

Could you just for the record explain how these elements work differently, uniquely, and well before your ranching community, and do you find that ranchers gravitate toward them? Are they popular or are they accepted well?

Mr. HODGSKISS. Thank you for the question, Congresswoman.

Yes, to answer that last question first. They are very popular. It took awhile for the community to warm up to the idea. Once a couple prominent ranchers stepped out and took advantage of the conservation easement, they are not extremely popular. As I mentioned in my testimony, we currently have about 120,000 acres on call waiting, if you will, waiting for funding. That represents——

Ms. CAPPS. Wow.

Mr. HODGSKISS.—about 16 ranchers. As I was thinking about my testimony just within my own portfolio at the bank, we are a small community agricultural bank, and I currently have somewhere in the neighborhood of 15 to 20 of my customers are involved with an operation of some kind that have been involved with the conservation easement.

So, it is being embraced by the community, largely in part because of the long-term relationship that the Nature Conservancy has built in our area through their local project manager. He has lived in our community, and there has been a great deal of trust developed there, and I think people maybe underestimate the im-

portance of that trust when they are trying to work with farming ranching community.

In terms of trying to specifically identify how the conservation also impacts our local economy, ranchers are a bit like everyone else. Any money they have they spend it quite rapidly in one way or the other, and most of the instances I have been familiar with they have used that money to leverage themselves into a larger operation to help their economies of scale and to make room for the next generation. As ranching changes, they need more and more ground. They need more and more animals to remain viable. And in order to make room for the next generation you just need more and more economies of scale.

So, that is the manner in which most often I see easement funds used is to expand their ranch operation. How that flows down to the local community is such that if the ranchers were unable to buy that neighboring ranch, it likely would be bought by a recreational buyer that would not be stocking it with cattle.

Ms. CAPPS. Right.

Mr. HODGSKISS. They would not be spending much money on mineral or veterinary services, and all those things flow into our economy and replicate themselves.

Ms. CAPPS. I appreciate that you isolated it. The long-term presence there of the conservation organization to appreciate the ways that the economy will really be strengthened, the way they can fit in these easements so that it will absolutely strengthen the economy, as well as to protect some of the goals of preserving the rural landscape, allowing the ranching to continue, which is such a valuable part of our common history, and our needs.

So, thank you very much for your answer to the questions. Thank you, Mr. Chairman, for your indulgence.

The CHAIRMAN. Thank you. Any more questions on the Minority side?

Then the gentleman from American Samoa is recognized again.

Mr. FALEOMAVAEGA. I appreciate that, Mr. Chairman. I note with interest the line of questions that were presented earlier by my colleague from Guam, Ms. Bordallo, and I guess this is to Mr. Mann. I am sorry, I did not mean to say Mr. Pew, but you represent the Pew's foundation.

Mr. MANN. It would be an honor.

[Laughter.]

Mr. MANN. You are wearing a much better suit.

Mr. FALEOMAVAEGA. I just wanted to ask you, I know that the Pew Foundation has been actively engaged, in fact, you even released an oceans report I thought was an excellent report concerning the ocean situation, and because our areas deal a lot with the oceans, what are the implications and the fact that we are not members of the Law of the Sea Convention that has been signed off by over 150 countries, and the fact that these countries are carving out all these different areas, ocean included, about the potentials of mineral resources contained in the bottom of the ocean?

Do you think that we ought to continue not being a party to this important international treaty that is currently being implemented, and that we are just sitting by and doing nothing?

Mr. MANN. No, I strongly think that and the Pew Environment Group strongly supports accession of the United States to the Law of the Sea Treaty. We believe it is hindering our efforts to stake a full claim over resources that might pertain to the United States, and to participate in international discussions about the management and protection of marine resources, particularly in the Arctic where there is aggressive action by a number of countries to stake out——

Mr. FALEOMAVAEGA. Russia, especially.

Mr. MANN.—outer continental shelf claims. With the changes that are already happening in the Arctic and more to come, it is absolutely critical that the United States accede to the Law of the Sea Convention.

Mr. FALEOMAVAEGA. One of the concerns that I have every time we talk about minerals it is also within the continental United States or Alaska, but we never talk about the minerals contained in the bottom, the seabed is what I am talking about, the oceans. We have jurisdiction to the fact that not only in these territory or islands, but even in other areas where we could lay claim.

My point is that the Cook Islands, I do not know if you are familiar of this situation, only about 20,000 people, but they own about 3 million square miles of ocean, and a company I think from Norway recently conducted the potential there is in the seabed ocean of this little island nation, and found out that they have what is known as manganese nodules, and these nodules contain manganese, cobalt, nickel, copper, and maybe one or two very valuable minerals. It is estimated that this little island nation at least has a potential to well over $200 billion worth of manganese nodules if they are ever to harvest this from the bottom of the ocean.

Do you think our country should be serious about maybe that we ought to do this because we have ownership for so many of these different islands, Jarvis, Johnson, Midway, Wake Island, and that the contents of these areas as far as seabed minerals is going to be just as much part of our resource and our wealth that we have not even given any serious consideration for?

Maybe this legislation might address that issue as well? It is a mineral.

Mr. MANN. Yes.

Mr. FALEOMAVAEGA. Although it is not on land, it is in the ocean.

Mr. MANN. It is a mineral. I would need to think about. I would assume that those might be subject to leasing under the OC Lands Act, but I am not sure at this moment.

With respect to the larger issue of whether we should consider developing those, I mean, that is a public policy decision for the administration and Congress to decide. The Pew Environment Group would, of course, want to make sure that those minerals were developed in an environmentally responsible way. The deep sea is a little known environment, and what we have seen in the past, unfortunately, with our resource exploitation in this country and around the world is that we often rush in and dig things up, and drill, and do not necessarily take care to examine the environmental impacts beforehand.

Having said that, those manganese nodules are potentially strategic minerals. Up till now the economics, you know, the minerals

are very concentrated in those nodules, so if you get one in your hand it is much better than most of the ores that we dig out of the ground. The problem is you have to go down three, four, five thousand meters in some cases to get them, and that kind of puts a crimp on the economics. So those have not in the past been economically exploitable. With the price of metals right now in our economic situation I don't believe they really are, but at sometime in the future they might become so, in which case you need a regime for managing those both domestically and internationally, and the Law of the Sea provides an international regime.

Mr. FALEOMAVAEGA. And I just want to make this observation. I know my time is over. I do not mean to disregard our other good witnesses, but how ironic it is, Mr. Chairman, that here we are, we want to go to Mars, and we do not even know what is contained in our marine resources in the oceans.

Thank you, Mr. Chairman. Thank you.

Mr. MANN. Thank you.

The CHAIRMAN. Thank the panel very much for their time and expertise this morning. Appreciate it.

Our next panel is composed of the following individuals: Mr. Craig Mataczynski, President and CEO, RES Americas; Mr. Alex B. Campbell, Vice President, Enduring Resources, LLC; Dr. Dennis E. Stover, Ph.D., Executive Vice President, Americas Uranium One; Mr. Doug Morris, Group Director, Upstream & Industry Operations, American Petroleum Institute; and Mr. James E. Zorn, Executive Administrator, Great Lakes Indian Fish and Wildlife Commission.

Gentlemen, we welcome you to the Committee on Natural Resources. We do have your prepared testimony which will be made a part of the record as if actually read, and you are encouraged to summarize within the five-minute period, and may proceed in the order in which I just announced you.

Mr. Mataczynski.

STATEMENT OF CRAIG MATACZYNSKI, PRESIDENT AND CEO, RES AMERICAS

Mr. MATACZYNSKI. Good morning, Chairman Rahall, Ranking Member Hastings, Members of the Committee. Thank you for the opportunity to speak to you this morning about H.R. 3534.

My name is Craig Mataczynski. I am the Chief Executive of Renewable Energy Systems Americas. RES Americas is one of the leading renewable energy companies in the country. We have constructed, owned or operated more than 3,400 megawatts of renewable energy projects since 1997, and have made more than 12,500 megawatts of wind and solar projects currently in our development portfolio. I am also testifying this morning on behalf of the American Wind Energy Association, or AWEA, and the Solar Energy Industries Association, or SEIA, S-E-I-A.

In terms of my specific comments on H.R. 3534, I want to be clear that the renewable energy developers are generally supportive of the existing Federal framework for permitting projects. The process is not perfect, but we believe that the shortcomings in the existing processes, such as inconsistent implementation of the rules by some field offices, delays in processing, and inadequate re-

sources for the agency, do not require a major overhaul of the rules.

That said, we do understand that the Committee's interest is in reforming the rules for wind and solar, so I will provide recommendations on how to improve the overhauls proposed under the bill while noting that the wind and solar industries believe that addressing the shortcomings in implementing the existing rules would have the most positive impacts in the near term.

First, I would like to acknowledge some improvements that have been made. The wind and solar industries greatly appreciate the removal of the onshore mapping provisions that could place broad areas off limits to renewable energy development regardless of site-specific characteristics or information. We also appreciate the addition of language allowing the Secretary to provide preference during the competitive process to a company that has installed a meteorological tower or another device for resource measurement. Finally, we appreciate the expanded grandfathering provisions for both onshore and offshore projects. However, even with these improvements we see the need for additional enhancements in these areas and others.

Regarding the consolidation of energy leasing programs, the wind and solar industries are concerned that consolidation of all energy leasing into a single office will undermine the renewable energy coordination offices the Secretary has created, and further increase already extensive processing delays.

If you move forward with consolidation, we would respectfully request a separate and adequately sized staff dedicated solely to reviewing and processing renewable energy applications. We would also suggest including legislation along the lines of H.R. 2662 to dedicate a portion of the renewable energy fees back to the Interior to fund the processing of additional renewable energy applications.

Regarding competitive leasing, our industries understand the interest in moving all energy sources to the same time of leasing platform, at the same time, as I detail in my written testimony, the Federal track record with respect to competitive leasing for wind and solar has not yielded positive results, and the solar industry, which is even less mature than the wind industry, sees more difficulties.

If the Committee does elect to move forward with competitive leasing, we would recommend the following:

First, the Secretary should be required to establish standards for bidders to demonstrate that they have developed capabilities and financial wherewithal to complete viable projects. These recommendations combined with existing due diligence language would discourage speculation.

Second, bidding should be done in a single round with strict timelines for leasing office actions; and third, to ensure comparability of the various bids the process should be based on a package of rental fees prior to operation of a project, project operational date, and royalties once the project is operational.

Regarding grandfathering, we propose grandfathering all projects with applications pending as of the date of enactment of the bill. This would hold harmless those applicants who have filed papers, spent time and money, but may have seen delays in processing. For

example, my company has been waiting for over five years to get a met. tower lease from BLM on one of our wind projects. With the existing grandfathering language, despite the significant money and time we have already spent, we would have to bid in order to continue development of that site.

With respect to royalties, the rental fees paid by wind energy developers already incorporate a royalty calculation by the BLM of 5 percent of project revenues. This is approximately market. Under the current system solar developers pay an annual rental fee based on a BLM evaluation of the permitted land. Should the Committee move forward with a more explicit royalty process we request the following considerations:

First, we think the current royalties for existing project should remain unchanged.

Second, royalties for wind projects should be based on the revenue stream, that is, royalties should be set on a dollar per megawatt basis, and royalties for solar projects need to consider both the revenue stream and the permitted acreage.

Third, royalties should be fixed for the life of the project at the start. Predictability is a critical element of financing renewable energy projects.

Finally, relative to offshore wind energy development a few comments. My company is not currently building any offshore wind farms. However, I will share the concerns that we as offshore wind developers with the bill.

In terms of grandfathering for offshore development creation of the strategic plans and zoning envisioned under H.R. 3534 adds a new layer of regulation for offshore wind at the time when the ink is barely dry and the rule is finalized by MMS a few months ago. Offshore wind developers and potentially investors in both projects are extremely wary of new regulations which may result in further delay.

Relative to marine spacial planning, the wind industry supports it in principle, however we see a need to be careful in that the collection of data is relatively little at this point. There are some big data gaps that exist. So proceeding in a way that would not limit the development of offshore winds, overly development of offshore projects would be advisable.

I want to thank you again for the opportunity today. The wind and solar industries do look forward to continuing to work with the interested members of the Committee staff on improving the bill as it moves forward.

[The prepared statement of Mr. Mataczynski follows:]

Statement of Craig Mataczynski, President and CEO of RES Americas, on behalf of the American Wind Energy Association and the Solar Energy Industries Association

Introduction

Chairman Rahall, Ranking Member Hastings, members of the Committee, thank you for the opportunity to testify today about H.R. 3534 on behalf of the wind and solar energy industries.

My name is Craig Mataczynski. I am President and CEO of RES Americas. RES Americas is one of the leading renewable energy companies in the country. We have constructed, owned and operated more than 3,400 megawatts (MW) of renewable energy projects since 1997; and have more than 12,500 MW of wind and solar projects currently under development.

I am also testifying as a Board member of the American Wind Energy Association (AWEA)[1], as Chair of AWEA's Siting Committee and as a member of the Solar Energy Industries Association (SEIA)[2].

Status of the Wind and Solar Energy Sectors

Let me start by giving you a sense of the current scope and potential of renewable energy to power our country, employ Americans in good jobs, and rebuild our manufacturing base.

Last year, wind accounted for 42% of all new generating capacity, second only to natural gas for the fourth year running. Total wind energy capacity is now over 29,440 megawatts, enough to power nearly 8 million homes. Thirty-five states have utility scale wind projects. The U.S. solar industry has demonstrated remarkable growth as well, with the annual rate of PV installations alone growing by more than 80% in 2008. New utility-scale solar power plants have been announced in states ranging from California to Texas, Florida, Pennsylvania, New York and more, and projects totaling more than 10,000 MW are currently operational or under development.

The renewable sector has seen significant growth in manufacturing as well. Wind turbine and component manufacturers announced, added or expanded over 70 facilities in the past two years. Wind-related manufacturing is occurring in over 40 states. U.S. solar panel manufacturers currently have production capacity in excess of domestic demand, and domestic manufacturing capacity is keeping pace with demand growth. Suppliers of components for Concentrating Solar Power (CSP) plants have also significantly increased their domestic presence in the last two years.

The wind industry employs at least 85,000 workers in the U.S. in good paying jobs. The solar industry supports thousands of small businesses and tens of thousands of employees nationwide.

This is just the beginning.

The U.S. Department of Energy has concluded that achieving 20% of our nation's electricity from wind energy alone by 2030 is feasible with no technological breakthroughs and that achieving that level of deployment would have significant benefits for the environment and our economy. The industry views 20% as a floor for our potential, not a ceiling.

There is also significant potential for growth of solar energy in the United States. A study conducted by the Department of Energy for the Western Governors' Association determined that the seven states in the Southwest have a combination of solar resources and available suitable land to generate up to 6,800 GW of electricity. This compares to today's nameplate capacity for all electricity generation of 1,000 GW.[3]

Wind and Solar Industries Appreciate Improvements Made from Earlier Draft

With respect to the specifics of H.R. 3534, I want to be clear that renewable energy developers are generally supportive of the existing federal processes for permitting projects. These processes are not perfect; but, the problems that do exist—such as inconsistent implementation of the rules by some field offices, lengthy delays in processing, and inadequate financial resources for the agencies—do not require a major overhaul of the rules. Further, the current Administration is already taking steps to address many of the problems areas.[4] At the same time, we understand the Committee's interest in reforming the rules for wind and solar to more closely mirror those applicable to other technologies. So, I will spend much of my testimony on recommendations to improve the workability of the overhauls proposed in H.R. 3534 even as our industries have some reservations about those overhauls.

---

[1] AWEA is the national trade association of America's wind industry, with more than 2,300 member companies, including project developers, manufacturers, and component and service suppliers.

[2] SEIA is the national trade association of the solar energy industry, representing over 900 member companies. As the voice of the industry, SEIA works to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry, and educating the public on the benefits of solar energy. RES Americas currently is serving as Chair of the Siting & Permitting Work Group.

[3] "Analysis of Concentrating Solar Power Plant Siting Opportunities: Discussion Paper for WGA Central Station Solar Working Group," M. Mehos, NREL, July 2005

[4] For example, Secretary Salazar issued a Secretarial Order prioritizing renewable energy development on public lands. FERC and MMS resolved a long-standing dispute over energy regulation on the outer-continental shelf, which allowed the MMS rules governing offshore renewable energy development to be finalized. Secretary Salazar established renewable energy coordination offices. And, the BLM just held an informational conference for field staff in the Western U.S. on wind and solar energy.

I want to begin my discussion of the specific provisions of H.R. 3534 by acknowledging some improvements that were made from an earlier draft version of the bill.

The wind and solar industries greatly appreciate the removal of the provisions requiring mapping of federal lands and the creation of strategic plans that would put potentially broad areas off-limits to renewable energy regardless of whether site specific reviews would reveal no conflicts or concerns.

We also appreciate the addition of a provision to the onshore competitive leasing provisions that allows the Secretary to provide preference during the competitive process to a company that has gone through the expense of putting up a meteorological tower ("met tower") or another measurement device to collect resource and other data for a given site. This is a key change because without some right to develop a site where a company has spent time and money verifying that the wind or solar resource is viable; there will be little interest in developing on public lands. However, we would urge that this ability to develop be made more explicit by giving the companies that are actively doing resource assessments the right of first refusal to build on a given site. We would also request that this language be further clarified to ensure the resource and other data collected by a company is considered proprietary and is not subject to release to competitors. These are competitive industries and no one wants to give a competitor an edge by turning over expensive data for free.

Finally, we appreciate the expanded grandfathering provisions for both onshore and offshore projects that are intended to ensure prior investments by developers are not lost during the transition to a new system. Though we believe further refinement is necessary in this area and look forward to having discussions with the Committee on this in the future.

At the same time, renewable energy developers continue to have concerns with the bill that I will summarize below. These concerns relate to the following areas:

- Consolidation of energy leasing programs
- Competitive leasing for onshore projects
- Offshore strategic plans and ocean zoning

Consolidation of Energy Leasing Programs

Renewable energy has often been neglected and poorly understood by federal lands agencies. This is changing slowly, and Secretary Salazar's leadership in this area has been beneficial. The development process, economics and other aspects of renewable energy projects are different than the oil and gas projects with which agency staff are familiar. For example, electricity sold from a renewable generation project is the refined product which means that the levels of royalties available are not going to be at the same level as oil or natural gas because the value of electricity isn't as high as petroleum products. In addition, renewable energy development does not deplete finite resources.

The wind and solar industries are concerned that the consolidation of all energy leasing into a new office will undermine the Renewable Energy Coordination Offices the Secretary has created to establish and focus expertise on renewable energy permitting. This has the possibility of disadvantaging renewable energy vis-à-vis oil and gas; maybe not with this Administration, but with future ones.

Our industry is also concerned that undertaking this reform at this time will delay the resolution of the large and growing backlog of pending renewable energy applications[5], as well as complicate the processing of applications by the Minerals Management Service (MMS) under the new offshore renewable energy rule, as staff and managers are forced to devote time to reorganizing.

If you move forward with consolidation, we would respectfully request that you maintain within the new office a separate and adequately sized staff dedicated solely to reviewing and processing renewable energy applications. We would also suggest including legislation along the lines of H.R. 2662, introduced by Rep. Heinrich, to dedicate a portion of the fees paid by renewable energy developers back to Interior to provide a steady stream of funding to improve the processing of additional renewable energy applications.

Competitive Leasing for Onshore Development

Competitive Leasing Generally

Our industries understand the interest in moving all energy sources to the same type of leasing program.

[5] According to a fact sheet accompanying a June 2009 BLM press release, BLM has received 158 solar applications (up from 135 in January 2008) and 281 wind energy applications (up from 150 in January 2008).

At the same time, there has not been much historical competition for areas in which a given onshore wind or solar developer proposes a project on federal lands. The Bureau of Land Management (BLM) does have the authority to run competitions today, but has largely chosen not to because of the lack of competitive interest.

BLM has run competitive processes for wind energy development a handful of times. These have resulted in the expenditure of significant funds by both BLM and developers but the results have been that no wind projects have been developed on sites where a competition has been held.[6]

Additionally, the solar industry is even less mature than the wind industry. To date, the BLM has not issued a right-of-way permit for a solar project. While competitive bidding may work for established industries like oil and gas or mining, it may not be appropriate for less mature market entrants like solar.

The industry therefore, recommends that instead, the BLM should focus on improving the process for granting permits to companies with the financial and technical expertise to bring solar projects to fruition.

Also, keep in mind that the BLM has recently adjusted the rental fees paid by wind energy developers to include a royalty calculation of five percent of project revenues. This approximates the current royalties received by private land owners; and, therefore, does not reflect a loss of revenues from federal lands.

We are, also, concerned that moving to competitive leasing will delay renewable energy development on federal lands. Competitive leasing will take enormous government and developer resources to engage in. It will make federal lands potentially less attractive to develop by adding complication and expense to a process that is already difficult and generally more expensive[7] than developing on private lands.

If the Committee elects to move forward with competitive leasing, we would recommend some additions to the provisions in H.R. 3534 to ensure the process is fair, does not add time to the development process, and results in a more rapid deployment of megawatts.

The Secretary should be required to establish standards that bidders will have to meet to demonstrate they have the development capabilities and financial wherewithal to complete a viable project. The Secretary should require bidders to demonstrate an understanding of the technology they're using and the experience and knowledge to construct the project. This should also require that the bidder be able to demonstrate a history of successfully completing such projects. These recommendations, combined with the due diligence language already in the bill, will work to discourage speculation.

Second, bidding should be done in a single round[8]. This should be accompanied by strict timelines under which the new leasing office is required to act. For exam-

---

[6] One of the competitions was around 2005 for a parcel in Palm Springs and one was out of the Ridgecrest field office in the 1990s. With respect to Palm Springs, it took a year and a half from the first bid to the awarding of the right to apply to put up a met tower (not even the right to put it up, but the right to apply to put it up). And, it took this length of time despite the fact that the Palm Spring office was experienced with wind energy development, and despite the fact that the parcel had previously been developed and decommissioned. The winning bidder still has not been able to get a project constructed on this parcel despite having a signed power purchase agreement (PPA). The Ridgecrest process became so drawn out and complex that it eventually collapsed.

[7] Here are some examples to better understand how the cost to develop a wind project on BLM lands compares to private lands:

The relative cost of BLM rent is generally high relative to private land on lower wind sites, and low compared to private land on high wind sites. This is because the BLM rent is fixed regardless of how much electricity is generated, and private leases are often (though not always) based on a percentage of the revenue paid by the power purchaser. However, most of the very windy BLM sites are already being developed and in the future the less windy sites will be the most common BLM projects, so this cost disparity will become less and less favorable toward developing on BLM land in the future.

BLM charges 5101 Account Reimbursement fees for yearly administration of the right-of-way beyond the cost of rent. This can add up to more than $100,000 over the project life, an expense that is not incurred on private land. Secondly, BLM reviews and increases rent every 5 to 10 years, unlike private leases which are fixed at the time of option negotiation, so BLM rent is unpredictable compared to private land rents. Thirdly, BLM typically requires an EIS to satisfy the NEPA process, which is both costly and time consuming. When you add these costs to BLM right-of-ways compared to private land, the costs on BLM land are comparable to private land or higher.

BLM requires $10,000 per turbine decommissioning bond, which may be the very highest anywhere in the US, and is above the actual net cost. Previous BLM bonds were $3,000 per turbine. Private land decommissioning bonding is typically $0. Since a wind company cannot post a surety bond on BLM rights-of-way, and typically must post cash for the entire life of the right-of-way, this is a time cost of money expense that does not occur on private land.

[8] BLM used a multiple round bidding process in the Palm Springs case, which is one of the reasons it took 18 months.

ple, once a bid is released, bidding should be open for a set period of time, say 60 days, after which the office would be required to announce the winner bidder within 15 days. Timely resolution of the bidding process with strict timelines is the key to any competitive bidding process that seeks to encourage the development of renewable energy projects.

Finally, the bidding should be based on a package of what companies are willing to pay in rental fees prior to a project being operational, the date a project could be placed in service, and the royalties a bidder is willing to pay after the project is operational.

Grandfathering

With respect to grandfathering for onshore projects, currently, the language in the bill applies to projects that have submitted a Plan of Development (POD) or have a met tower or other measuring device in place prior to enactment of the bill. This is an improvement from the earlier draft that just grandfathered projects that had reach the POD phase. However, some companies cannot get met tower right-of-ways (ROWs) from federal agencies in a timely manner, let alone get to the POD stage, due to agency backlogs. One quick example from my company. We've been waiting for over five years to get a met tower lease from BLM for one of our projects. We've spent money doing environmental reviews for the met tower and preparing a POD for the tower. With the existing grandfathering language, despite the money and time we've already spent, we'd be out of luck on this project and would have to bid to continue it.

We believe that additional projects deserve to be grandfathered. Penalizing developers by failing to grandfather them in because of delays attributable to agency backlogs or related inaction would have a chilling effect on development.

We strongly urge the Committee to consider establishing a broader threshold: a date prior to which all projects with pending applications would be grandfathered. We propose grandfathering all projects with applications pending as of the date of enactment of the bill. This would hold harmless those applicants who have filed papers, spent time and money, but may have seen delays in processing for one reason or another.

Royalties

H.R. 3534 requires wind and solar development to move away from the rental-fee model for renewable energy and toward a royalty-based approach.[9] The rental fees paid by wind energy developers already incorporate a royalty calculation by BLM of five percent of project revenues. This was raised from three percent by BLM last year.

Under the current system, solar developers pay an annual rental fee based upon a BLM valuation of the permitted land. BLM is currently conducting its valuation for the first solar project anticipated to receive a Right-of-Way permit.

Should the Committee move forward with an explicit royalty process, we would request that there not be any net increase in the amount renewable energy projects pay the federal government, as the current payment levels are consistent with those in place on privately owned lands. As discussed above with respect to how to make a competitive bidding process workable, I believe the best way to accomplish this would be through a competitive bidding process that would establish the current market value for royalties at a particular site in much the same way royalty rates are established for private lands; but does not result in additional impositions of cost or time as part of the process.

We also suggest that to ease the administration of any suggested change over to royalties that they be based on the revenue stream (dollar-per-megawatt-hour basis) for wind development. Royalties for solar development need to consider both megawatt-hour output and permitted acreage. Finally, it would be important to have a fixed royalty for the life of the project at the start so that it could be factored into

[9] The Committee should not underestimate the difficulty of calculating royalties. And, keep in mind that a royalty does not necessarily mean a higher return to taxpayers. It is our understanding that the Palm Springs BLM office was the entity that actually recommended to BLM headquarters that the Bureau move from royalties to rental payments because it was extremely difficult to determine whether the proper royalties were being paid. The paperwork submitted by the generators and the utilities that bought the power was complex and BLM had a lot of trouble understanding it. With rental payments—particularly since BLM increased the payments last December—projects in high wind areas may pay a little less than they would under royalties, but projects in lower wind areas (which are generally the only areas left unclaimed) would be paying more than they would under a straight royalty system. In the competitive process envisioned by H.R. 3534, the level of royalties a bidder is willing to pay will be set by the market. That may or may not be the 5% currently used in BLM's calculation of the rental payments charged to wind projects.

financing up front. Predictability is critically important for renewable energy projects because all of the capital costs are paid at the outset.

Offshore Wind Energy Development

While RES Americas is not currently building any offshore wind farms, I will share the concerns of AWEA's offshore wind developers with the Committee. The U.S. recently marked the end of a de facto four-year freeze on offshore wind development with the publication of a long-delayed Minerals and Management Service leasing rule for renewable energy projects on the Outer Continental Shelf (OCS). Publication of the rule followed issuance of a comprehensive Programmatic Environmental Impact Statement that was itself two years in the making.

Creation of the strategic plans and ocean zoning envisioned in Title VI of H.R. 3534 adds a new layer of regulation for offshore wind at a time when the ink is barely dry on the latest regulatory framework. Even with the grandfathering language, adding this new process signals that the U.S. is still not ready to commit to a single rulebook for offshore renewable energy development. From the perspective of offshore wind developers and potential investors, including firms that are considering substantial investment in key elements of the supply chain and service infrastructure, there is strong concern about a new process to add a new layer of regulation and delay when the rules of the road were originally just set a few months ago.

Grandfathering

While we appreciate the addition of offshore grandfathering language, we have concerns about the existing thresholds and would like to work with the Committee to find the most appropriate thresholds to ensure the offshore wind industry is fairly treated, investments in manufacturing and services can go forward, and viable projects are not delayed (for example, but not necessarily limited to, those with met towers installed or leases for met towers and those moving forward as a result of state competitive processes).

Marine Spatial Planning

The wind industry is not opposed in principle to ocean zoning, or marine spatial planning (MSP). If properly implemented, MSP could lead to more accurate analyses of potential environmental threats and wiser resolutions of conflicts among users.

However, existing information bearing on the economic viability of offshore wind sites is particularly sparse. The siting of offshore wind turbines depends on detailed physical data, including hub-height wind speed, site-specific geophysical and geotechnical information, and information on wave conditions through the seasons. This information does not now exist on the scale or level of detail that would be required to reach sensible OCS-wide judgments about where offshore wind farms should be sited.

The language as written recognizes the need for additional data but it still directs plans to be created and decisions to be made with admittedly limited facts. The lack of information specific to offshore wind energy development could unnecessarily limit offshore wind projects to areas that are not, in fact, economically viable.

Siting factors relating to human systems and policies add further complexity to any effort to zone for offshore wind projects. Offshore wind projects require access to onshore transmission grid connections and access to markets in which there is public support for renewable energy development (through, for example, renewable electricity standards). An attempt by planners to zone for (and against) offshore wind development without reference to these (changeable) political and legal factors could confine offshore wind projects to unnecessarily narrow areas that developers cannot pursue due to poor economics.

Conclusion

The wind and solar industries appreciate the Chairman's willingness to make changes to the earlier draft to reflect comments from our sectors on how the bill would impact development. We look forward to continuing to work with interested members and the Committee staff on improving the bill as it moves forward.

Response to questions submitted for the record by Craig Mataczynski, CEO, Renewable Energy Systems Americas, Inc.

Question from the Majority

1. Mr. Mataczynski, you indicate in your testimony a concern that renewable energy leasing would be disadvantaged relative to oil and gas if combined in one office with fossil fuel leasing. However, the Committee

has heard complaints from other representatives of the renewable energy industry that oil and gas permits are issued more efficiently than renewable energy permits. Why do you really believe that combining the leasing programs in one office, as proposed in H.R. 3534, would disadvantage your industry? And, further, do you have any analysis or data to support your fears?

Thank you for the question. I agree that oil and gas permits are generally issued more efficiently than renewable energy permits. In fact, I think that serves to underscore my point. Let me explain.

In the Energy Policy Act of 2005, Congress approved several oil and gas pilot projects that recycled tens of millions of dollars in oil and gas royalties back into the Bureau of Land Management every year for the purpose of expediting additional oil and gas permits.

It is my understanding that this provision led to the hiring of at least 150 BLM staff and is funding 30 staff from agencies like the Forest Service and the Fish and Wildlife Service in order to create "one-stop" locations for oil and gas producers. Concentrating the expertise for oil and gas permitting and creating a dedicated staff focused solely on processing these permits seems to have had the desired effect of expediting the process.

Renewable energy has not enjoyed that benefit, which is one of the reasons why processing renewable energy permits can take 18 months or longer, whereas processing oil and gas permits may only take six or seven months. In my written testimony, I expressed support on behalf of the American Wind Energy Association (AWEA) and the Solar Energy Industry Association (SEIA) for legislation introduced by Rep. Heinrich, H.R. 2662.

H.R. 2662 would provide renewable energy with a benefit the oil and gas industry already enjoys. Specifically, the bill would set aside a portion of the fees renewable projects pay for permits, and dedicate that portion toward funding federal agency staff dedicated solely to processing additional permits for renewable technologies.

I think another reason for the discrepancy in timing is that federal agency staff tend to be more familiar with conventional energy extraction projects than they are with renewable energy projects. This is largely a function of the length of time field staff has been dealing with oil and gas versus renewable energy projects.

Consolidating organizational charts such that the same office or staff works on permits for both types of projects will not improve this situation. In contrast, Secretary Salazar's establishment of Renewable Energy Coordination Offices will. Creating a corps of agency staff whose sole responsibility is evaluating renewable energy applications should improve the efficiency with which those applications are processed.

Economics also play a role in the priority given to various uses of public lands. Oil and gas activities generate, on a per acre basis, some 5-10 times the revenue as would be expected from wind or solar energy development. While I would like to believe wind energy would get equal treatment, my experiences in places like Texas demonstrate that the resources are allocated first where the highest revenues would be generated. This would leave wind and solar as a second priority. To some, that may also lead to the question of whether it is worth dedicating public lands to renewable energy generation.

However, Congress and this Administration, as well as the previous Administration, are all on record stating this is a worthwhile goal for this country. In addition, there are many places where oil and gas and renewable energy are not co-located, making wind and solar development and the resulting revenue to taxpayers an attractive option. And, even when resources are in the same general vicinity, my experience in Texas demonstrates that turbines and drilling rigs can exist as close as 500 feet to each other.

While the current Administration has made renewable energy development a priority, and perhaps this competition for resources concern would not manifest during the next several years, there is no guarantee that a future Administration would share this priority.

Finally, the concern about the consolidation arises more generally out of the complications that follow any reorganization, whether in the public or private sector. Change is never easy—in most organizations it leads to bureaucratic turf fights, steep learning curves as staff are transferred to jobs with new responsibilities, and delays and insecurity as people settle into new work environments with new rules and expectations. Perhaps in the long run the reorganization would prove to be beneficial, but in the near term, we do not expect that it would improve the process for renewable energy projects.

As I stated in my testimony, if you do move forward with consolidation, we respectfully request that you continue the Secretary's efforts to establish a staff dedicated solely to becoming experts in renewable energy and processing those permits.

Questions from the Minority

1. You expressed concerns in your testimony with several provisions contained within this legislation. Would you agree that if H.R. 3534 were enacted into law as currently drafted, it would put at risk the progress that has been made toward expanding the leasing and development of renewable resources in America?

As expressed in my written testimony, several of the provisions in H.R. 3534 would create obstacles to developing renewable energy resources on our public lands and on the Outer Continental Shelf. Different agencies follow differing policies with regard to renewable energy development, so I would like to address each separately.

Bureau of Land Management

The Bureau of Land Management (BLM) manages the majority of the public lands in the U.S. where renewable energy development companies see near-term project opportunities. Two specific provisions in H.R. 3534 could impede renewable energy development on BLM-managed lands.

1. Lack of Adequate Resources

A. Renewable Energy Coordination Offices

Since the development of a national Wind Energy Development Policy, first issued in August 2006, only two wind energy projects sited on BLM land have been fully permitted and begun construction.

This has largely been due to constraints in agency resources, expertise, and funding. BLM and Interior Secretary Salazar have taken steps this year to address these issues through training and the creation of Renewable Energy Coordination Offices in states with wind and solar resources.

It is my opinion that BLM and the Department of the Interior should be given a chance to implement this new initiative and see it through. Pursuing the alternative strategy of consolidating the leasing activities for all energy sources in one office is likely to consume valuable time and resources, at the expense of renewable energy development. What's more, even with the new office, renewable energy projects may potentially face the same challenges that have stymied development in the past.

B. Set Aside a Portion of Fees Paid and Dedicate Those Funds to Processing Applications

A better solution would be to bring wind and solar funding in line with other activities on BLM land. This could be achieved by passing legislation along the lines of H.R. 2662, introduced by Rep. Heinrich. H.R. 2662 would set aside a portion of the fees paid by renewable energy developers and redirect the funds back to Interior to be used for the specific purpose of processing of additional renewable energy applications.

C. Application and Implementation of the National Environmental Policy Act (NEPA)

As I have stated, the primary challenge on public lands, particularly on BLM-managed lands, has been the application and implementation of NEPA and other policies by field offices. It is critical that reforms aimed at resolving these issues be allowed to take effect rather than creating new processes that do not address the underlying issues.

I would like to make it clear, however, that NEPA itself is not the issue. Wind energy projects interconnecting to federal Power Marketing Administrations such as the Western Area Power Authority and Bonneville Power Administration also trigger NEPA, yet thousands of megawatts of wind energy capacity have been added to these systems.

2. Competitive Leasing for Wind and Solar Projects

The other BLM-related provision that could potentially be problematic is the requirement for competitive leasing for wind and solar projects. BLM already has the authority to offer land leases via a competitive process, but has largely chosen not to because of a lack of participant interest.

I think this lack of interest in bidding on areas for wind and solar development is due to a number of factors, including:

- the time needed to complete the leasing and permitting process on BLM lands, as compared to the time needed to complete the process on private lands;
- the lack of clarity surrounding the protection of proprietary data, as stated in my written testimony; and
- the fact that wind and solar resources can be found in many locations—unlike oil, gas, or even geothermal energy resources, which are concentrated in a relatively small number of locations. As a result, there is less inherent competition for wind and solar sites than for oil and gas sites.

The few competitive processes BLM ran for wind development in the past were time consuming, expensive, and ultimately did not result in the construction of a single wind turbine on the lands in question. As such, and for the other reasons explained in greater detail in my written testimony, we do not think this is a strategy BLM should be required to pursue. Rather, if it makes sense on a case-by-case basis, BLM should consider competitive leasing under their current authorities. As to how these leasing efforts should be conducted I would refer you to my previously filed testimony.

U.S. Forest Service

The Forest Service is reviewing only two project applications for wind energy projects on lands under Forest Service management through a Special Use Permit process. In 2007 the Forest Service released wind energy siting draft directives for public comment. AWEA submitted extensive comments [1] and it is my understanding that the draft directives are still under review at the Forest Service.

The wind energy industry strongly encourages the Forest Service to release an "interim final" version of the draft directives for an additional round of public comment before releasing final directives. As with BLM, we believe that working within the existing system will yield a more timely result than a wholesale reorganization of staff and resources.

Minerals Management Service

Development of our nation's offshore wind resources has for years largely been stymied while the Minerals Management Service (MMS) developed a regulatory framework as directed by the Energy Policy Act of 2005. MMS finally released the regulations for offshore wind project leasing and permitting in April 2009.

States and project development companies are anxious to put these new regulations into practice and have operational offshore wind projects on the Outer Continental Shelf in the next few years. However, as written, H.R. 3534 could create barriers to offshore wind development in two ways:

1) disruption and confusion due to the consolidation of energy leasing into a new office just as MMS staff is beginning to focus on processing offshore wind energy applications; and
2) unintended negative consequences due to strategic planning and ocean zoning based on incomplete information.

I have already addressed the issue of the new energy leasing office above, so I shall focus my response on the issue of marine spatial planning.

The strategic plans envisioned in H.R. 3534 would create a new layer of regulation at a time when the ink is barely dry on the preceding set of regulations. The offshore wind energy industry in the U.S. is just beginning to gain momentum in states up and down the Atlantic and around the Great Lakes.

Offshore wind is a highly specialized industry, and it relies heavily on data, much of which has yet to be collected for U.S. offshore wind resources. Creating a new regulatory structure based on limited data could result in poor planning, and will have the additional unintended consequence of signaling that the U.S. is not yet ready to seriously pursue offshore wind development.

This could have far-reaching consequences, because the infrastructure needed to support the growth of the offshore wind industry requires investment now. Companies seeking to invest in developing U.S. offshore wind may react to this signal by investing elsewhere, resulting in a loss of economic opportunities and green job creation.

2. Do you believe that the provisions of the Jones act relating to America's Merchant marine fleet, apply to the companies developing wind power in the OCS?

The offshore wind industry is operating under the assumption that the Jones Act will apply to wind projects on the Outer Continental Shelf (OCS). The U.S. does not

[1] See http://www.awea.org/policy/regulatory__policy/pdf/080123__AWEA__supplemental__comments__on__USFS__draft__directives.pdf

currently have vessels equipped to transport and install wind turbines. Therefore, such vessels will have to be built or retrofitted for project construction to begin.

Obviously, such activities have long lead times and can be expensive. Therefore, those investments are unlikely to be made until we have a stable national policy in place that allows offshore renewable energy projects to move forward.

The Jones Act requirements and the time needed to meet them underscore the industry's concern about the new layer of regulation created by this legislation, which will require mandatory strategic planning for offshore wind energy projects and other energy activities. The associated delay involved may jeopardize the substantial infrastructure investments that will be required at a time when we need to send clear signals to the market that the U.S. is serious about moving forward with offshore wind energy projects.

3. In light of the fact that so many companies in Europe that pioneered windmills with huge subsidies have begun moving their plants to China where costs are cheaper when the governments reduced the subsidies. Would it make sense to you that the committee includes a provision consistent with the Jones Act that the windmills be manufactured, in the US, to protect American jobs?

If I understand this question correctly, it suggests that a primary driver of the surge in turbine manufacturing in China is the reduction in European subsidies for wind energy. I would point out that a more likely driver is the fact that the Chinese government made a strong commitment to greatly increasing the usage of wind energy, which sent a strong signal to manufacturers, who then flocked to set up facilities in China.

Transportation costs account for roughly 20% of the cost of a wind turbine. It makes economic and competitive sense to produce turbines and their components as close to their point of ultimate usage as possible. However, manufacturing facilities represent a major investment.

The bottom line is that manufacturers have to believe there will be a strong and steady market for their product in the U.S. for them to invest in building a substantial manufacturing base here.

The U.S. wind industry has been hamstrung by an on-again, off-again approach that has made long-range planning all but impossible.[2] Despite this, the U.S. now ranks number one in installed wind capacity, and several new manufacturing facilities have been constructed.

In fact, wind turbine and component manufacturers announced, added or expanded over 70 facilities in the U.S. during the past two years. Vestas has four facilities under construction in Colorado. Gamesa recently built two facilities in Pennsylvania. Siemens just announced a facility in Kansas and already has one in Iowa. Acciona built a facility in Iowa. And, of course, domestic companies like GE and Clipper have manufacturing facilities here at home as well.

The U.S. wind industry employs at least 85,000 workers and wind-related manufacturing is occurring in more than 40 states. The share of domestically manufactured wind turbine components has grown from under 30% in 2005 to around 50% in 2008.

This is all good news, but what everyone should realize is that it is only a fraction of what could happen if we pass strong federal policies that commit us to a renewable energy future. The key to growing our nation's renewable energy industry is stable policies, including federal tax policies and state renewable electricity standards. A federal RES is critical to promoting even more domestic manufacturing for the renewable energy sector. By the same token, the establishment of domestic manufacturing for the offshore wind industry—which requires different equipment than the onshore wind industry—will require stable policies as well.

4. The CLEAR Act provisions for offshore wind power proposes charging bonus bids, rents, fees, and royalties to ensure a "fair return to the United States." Since wind power today relies on tremendous subsidies from the federal government. How much more should we be prepared to

---

[2] Wind turbines and solar panels benefitted from tremendous interest following the oil shortages of the 1970s which increased the price of electricity generated from oil. By 1986, California had more than 1,200 MW of wind energy capacity, or 90% of the worldwide installations at that time. Expiration of supportive policies in the mid-1980s meant that Europe took the lead in new capacity, along with the associated domestic manufacturing base. By 2000, Europe had more than 12,000 MW of wind energy capacity installed versus just 2,500 MW in the U.S. The on-again, off-again saga of the Production Tax Credit led to boom and bust cycles in development that are not conducive to companies investing the billions of dollars necessary to build a manufacturing base.

increase those subsidies so American taxpayers can be sure they are receiving a "fair return" in the form of royalties from the OCS?

I am not sure I understand the question. Charging bonus bids, rents, fees and royalties is presumably intended to increase the cost of development on federal lands and in federal waters. By contrast, subsidies are intended to have the opposite effect. I do not consider paying bonus bids, rents, fees and royalties to be a subsidy.

I dispute the characterization that the wind and solar industries receive "tremendous subsidies." Federal incentives are a fact of life in our energy industry today, for all sources of energy. Furthermore, numerous studies have shown that the subsidies for conventional and mature energy sources such as fossil fuels and nuclear power vastly exceed those for renewable energy, including wind.

For example an October 2007 report by the Government Accountability Office (GAO) found that between FY2002-2007, fossil fuels received nearly 5 times the amount of tax subsidies that renewable energy received. Furthermore, federal R&D funding was provided as follows: $6.2 billion for nuclear, $3.1 billion to fossil fuels, and $1.4 billion to renewables. And according to a 1978 report by the Battelle Memorial Institute, more than $500 billion in subsidies was spent on oil, gas, hydro and nuclear between 1950 and 1977.

For decades, the fossil fuel industry has benefited from what are essentially permanent tax subsidies. According to the Congressional Research Service, the U.S. government has explicitly subsidized oil and gas since at least 1916 with the passage of the intangible drilling cost deduction and passage of percent depletion allowance in 1926, with coal added in 1932.

In stark contrast, the tax incentive for wind has never been permanent. Implemented in the Energy Policy Act of 1992, the tax credit for wind and biomass expired in 1999 for a short period of time, and has never been extended for more than 3 years at a time.

Another notable comparison can be drawn with the unconventional fuels tax credit for oil shale, tar sands, synthetics fuels and coalbed methane and other unconventional fossil fuel development, which was instituted in the 1980 during the windfall profits tax and continues to exist for certain types of fuels.[3]

If energy is a public good and harnessing our nation's clean, renewable energy resources is in the public interest, then it is appropriate that renewable energy sources such as wind and solar receive support in the same way that the conventional industries have enjoyed over the past several decades.

5. Do you believe that windmills and oil and gas development are incompatible with each other or can Americans have all of the above energy production?

Wind energy is part of our energy mix. We will, of course, need oil and gas, as well as other energy sources to meet rising energy demand and maintain fuel diversity. However, wind and solar energy can play a much larger role that they do currently. In 2008, wind energy provided a scant 2% of our nation's electricity. The U.S. Department of Energy released a report in 2008[4] concluding that there are no technical barriers to reaching 20% wind-generated electricity by 2030.

6. Do you support enforcement of the Migratory Bird Treaty Act?

Wildlife laws are and should be enforced as required by law. No wind energy company has been prosecuted under either the Migratory Bird Treaty Act (MBTA) or the Bald and Golden Eagle Protection Act, although the U.S. Fish & Wildlife Service and the Department of Justice have the authority to do so.

I believe this is, in part, because the wind industry has a strong track record over the past 15 years of proactively addressing wildlife issues, and avian issues in particular. This record is described in greater detail below.

Wind energy projects collect information before and after construction to avoid, minimize, and mitigate wildlife impacts, and my company as well as others will continue to do so. Unfortunately, birds fly into even stationary structures, such as buildings and communication towers. Careful siting and efforts to avoid, minimize, and mitigate negative effects on birds have, to date, have resulted in no wind energy companies or projects being prosecuted.

---

[3] Congressional Research Service. Energy Tax Policy: History and Current Issues.. http://www.ncseonline.org/nle/crsreports/08Oct/RL33578.pdf

[4] U.S. Department of Energy, 20% Wind Energy by 2030 (Jul. 2008), available at http://www1.eere.energy.gov/windandhydro/wind__2030.html.

Proactive Wind Industry Efforts to Address Wildlife Concerns

In order to further reduce impacts to wildlife and the environment, the wind energy industry has committed to various efforts to define impacts to species in order to generate solutions to reduce them. Requirements that seek to reduce the local impacts of wind energy projects should be based on sound science. Fortunately, the body of scientifically based species-specific information continues to grow, and the wind industry has taken steps to add to that body of scientific knowledge through the proactive collaborative research projects discussed below.

The National Wind Coordinating Collaborative Wildlife Workgroup

For the last 15 years, the wind energy industry has actively participated in what is now called the National Wind Coordinating Collaborative (NWCC), which is comprised of representatives, among others, from the wind industry, environmental, and state and federal government sectors. NWCC identifies issues that affect the use of wind power and has established the Wildlife Workgroup to serve as an advisory group for national research on wind-wildlife interaction issues.

The wind industry has supported development by the NWCC of a siting handbook and avian site evaluation guidelines used by wind developers to screen sites and to provide research-based analysis that can avoid potential problems[5] The Wildlife Workgroup has also facilitated four National Avian-Wind Power Planning Workshops and three Wind Wildlife Research Meetings to define needed research and explore current issues related to wind energy's impacts on birds and bats.[6] At these meetings, scientists present the latest research findings and talk with other stakeholders about research gaps and future needs.

American Wind Wildlife Institute

The American Wind Wildlife Institute (AWWI) was founded in December 2007 by various wind energy companies and 20 of the nation's top science-based conservation and environmental groups, including the National Audubon Society, Union of Concerned Scientists, Natural Resources Defense Council, Sierra Club, and the Association of Fish & Wildlife Agencies.

AWWI's mission is to facilitate the timely and responsible development of wind energy while ensuring the least possible impact on wildlife and wildlife habitat. In order to achieve that goal, AWWI supports research, mapping, mitigation, and public education initiatives that guide best practices in wind farm siting and habitat protection. AWWI will also provide needed research data and advice on how best to utilize data sets in determining project site locations.

Bats & Wind Energy Cooperative

Since 2003, the Bats & Wind Energy Cooperative (BWEC), a joint effort by AWEA, Bat Conservation International, the National Renewable Energy Laboratory, and the U.S. Fish & Wildlife Service, has researched the issue of bat fatalities at wind energy projects and is exploring ways to reduce them.

BWEC focuses on finding good site screening tools and testing mitigation measures, including ultrasonic deterrent devices to warn bats away from turbines and potential operational adjustments to reduce mortality. BWEC collaborates to secure and administer cooperative funding among interested parties and allocate those resources to conduct local, regional, and continent-wide research required to address issues and develop solutions surrounding wind energy development and the fatality of bats.

BWEC supports three main areas of research to address concerns regarding bats and wind energy. This multi-dimensional approach will shape future research and determine next steps, which includes:

- pre-construction monitoring to assess bat activity levels and use at proposed wind turbine sites;
- post-construction fatality searches to determine estimates of fatality, compare fatality estimates among facilities, and determine patterns of fatality in relation to weather and habitat variables; and
- operational mitigation and deterrents that will focus on testing the effectiveness of seasonal low-wind shutdowns and deterring devices on reducing the fatality of bats.

---

[5] NWCC, Studying Wind Energy/Bird Interactions: A Guidance Document (Dec. 1999), available at http://www.nationalwind.org/publications/wildlife/avian99/Avian__booklet.pdf.

[6] Proceedings from past NWCC wildlife research meetings are available at: http://www.nationalwind.org/events/past.htm.

7. A recent article in the Wall Street Journal highlighted that Oregon-based electric utility PacifiCorp paid $1.4 million in fines and restitution for killing 232 eagles in Wyoming over the past two years. ExxonMobil just settled a suit for $600,000 regarding bird kills related to contact with crude oil or other pollutants in uncovered tanks or waste-water facilities on its properties. Do you believe those penalties are appropriate?

I cannot comment on the appropriateness of fines or penalties for MBTA violations by other entities.

8. Michael Fry of the American Bird Conservancy estimates that U.S. wind turbines kill between 75,000 and 275,000 birds per year. Yet the Justice Department does not bring cases against wind companies. Do you believe that wind companies should be compliant with the Migratory Bird Treaty Act as to how it relates to bird and bat kills?

a. If you answer yes, should wind companies be prosecuted with similar zeal to traditional energy companies?

b. If you answer no, why should we treat wind energy differently than other energy sources with respect to the Migratory Bird Treaty Act?

These figures cited by the American Bird Conservancy have no statistical basis that I am aware of. A report by the National Research Council found bird mortality at individual wind projects ranges from less than 1 bird per installed megawatt of capacity per year, to about 12 birds per installed megawatt of capacity per year, with the majority of sites studied at less than 3 birds per installed megawatt of capacity per year.[7]

This large range points to the differences among projects at a site-specific level. It is not appropriate, therefore, to extrapolate these figures to a national mortality rate. Furthermore, a full assessment of the effect of any energy resource on should also take into account the potential benefits to birds from reduced reliance on fossil fuels, such as reduced air pollution and reduced greenhouse gas emissions. For example, the U.N. Intergovernmental Panel on Climate Change predicts that climate change may contribute to the extinction of 20-30 percent of all species by 2030.[8]

Individual bird deaths due to wind development will never be more than a very small fraction of those caused by other commonly accepted human activities and structures.

Each year, in the U.S. alone, some of the biggest causes of bird fatality include:

- house cats and feral cats, which kill an estimated 1 billion birds;
- tall buildings, which kill an estimated 100 million to 1 billion birds; and
- automobiles, which kill an estimated 60-80 million birds[9].

Lastly, it should be noted that whereas there have been many extensive studies of bird collisions at wind energy projects, in contrast, there is a distinct lack of a systematic effort to monitor direct impacts on avian species from mining and drilling, power plant emissions or pollution, or habitat loss brought on by these activities.

The MBTA should be enforced against those people who knowingly take birds and do nothing to mitigate those impacts. As clearly stated above, this does not describe the wind industry which has been proactive in developing measures to avoid and reduce bird fatalities. Unfortunately, birds often collide with structures, natural and manmade, close to the ground and projecting into the air column. The wind energy industry is committed to the exercise of due care and the implementation of best management practices in order to avoid, minimize and mitigate negative effects on birds, and is seeking no loophole or change in the law.

MBTA does not cover bat species, and no bats listed as endangered under the Endangered Species Act have been found killed at any wind energy projects in the U.S. And it is important to note that not all wind energy projects have high rates of bat mortality.

Nonetheless, bat fatalities are a concern for the wind energy industry which is why, when relatively high levels of fatalities were discovered at a project in 2003, the American Wind Energy Association (AWEA) immediately partnered with Bat Conservation International, the U.S. Fish & Wildlife Service, and the National Re-

---

[7] National Research Council, Environmental Impacts of Wind-Energy Projects (2007) http://dels.nas.edu/dels/viewreport.cgi?id=4185

[8] Neil Adger, et al., Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change at 11 (Apr. 2007), available at http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-spm.pdf.

[9] FWS, U.S. Dep't of the Interior, Migratory Bird Mortality (Jan. 2002), available at http://birds.fws.gov/mortality-fact-sheet.pdf.

newable Energy Laboratory to create the Bats & Wind Energy Cooperative (BWEC). This is another example of how the wind industry is responsibly and proactively addressing environmental impacts.

As described in detail above, for the past five years BWEC has been focused on finding good site screening tools and testing mitigation measures, including ultrasonic deterrent devices to warn bats away from turbines and potential operational adjustments to reduce mortality.

BWEC and other collaborative efforts including the National Wind Coordinating Collaborative and the American Wind Wildlife Institute attest to the wind energy industry's proactive approach to minimizing wildlife and habitat impacts.

Wind energy is one of the most environmentally-friendly ways to generate electricity,[10] but all energy development has an impact on the environment. Through the proactive efforts described above, the wind energy industry strives to minimize impacts and has a proven track record of doing so.

The CHAIRMAN. Thank you. Mr. Campbell.

STATEMENT OF ALEX B. CAMPBELL, VICE PRESIDENT, ENDURING RESOURCES, LLC

Mr. CAMPBELL. Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss the CLEAR Act and the affects this legislation could have on the American energy supply on Federal lands in the inner mountain West. These lands contain vast amounts of our domestic natural gas resources. The expanded use of domestic natural gas is the most obvious and cost-effective way immediately and over the long term to reduce greenhouse gas emissions and increase our energy security.

Enduring Resources, my company, is a small independent natural gas exploration and production company headquartered in Denver, Colorado. Independent producers like Enduring are small businesses with an average of 12 employees, yet we drill 90 percent of U.S. wells and product 82 percent of America's natural gas. My company has 19 employees and natural gas holdings in Utah and Texas. Approximately 80 percent of our Utah wells and leasehold are on public lands.

I am here today on behalf of the Independent Petroleum Association of Mountain States, IPAMS, which represents more than 400 companies and over 150,000 workers engaged in all aspects of natural gas and oil production in the Rockies. The region's supply is about 27 percent of America's natural gas, about 54 percent which is on Federal lands. Therefore, the concern is that the CLEAR Act will put at risk approximately 15 percent of America's natural gas supply.

IPAMS believes that the CLEAR Act would put at risk many of the 267,000 industry jobs in the Rockies at time-consuming delays by creating a new government bureaucracy, and redundant layers of regulation; institute policies that will hamper the action of efficient market mechanisms; significantly increase costs to produce natural gas and oil on Federal lands; and fundamentally change

---

[10] A study by a leading environmental science research firm found land-based wind energy projects posed the least threat to vertebrate wildlife from electricity generation in comparison to the other major sources of coal, oil, natural gas, nuclear, or hydropower. Environmental Bioindicators Foundation, Inc. and Pandion Systems, Inc., Comparison Of Reported Effects And Risks to Vertebrate Wildlife from Six Electricity Generation Types in the New York New England Region at 7 (Mar. 2009), available at http://www.nyserda.org/publications/Executive%20Summary%20Report.pdf

the multiple use management of public lands to an approach that will restrict energy development, both conventional and renewable.

The legislation displays a lack of understanding of the business of natural gas and oil production. There are vast differences in geology, topography, and environmental considerations, market considerations, and many other factors which make each lease unique.

Producers are already making every effort to diligently develop leases where it makes economic sense to do so. Any definition if diligent development must include recognition of all factors involved in the exploration and production of natural gas. An additional impediment created by the proposed legislation is the imposition of top-down control from DOI by imposing best management practices and benchmark from Washington rather than from land managers on the ground.

I personally have extensive experience interacting with the various Federal agencies managing our public lands. I find these individuals to be hard working, dedicated, and willing to sit down and problem-solve at all levels as the local representatives of public lands that have the best understanding of how to protect the environment while achieving energy production.

The CLEAR Act directs fundamental changes to a Federal oil and gas leasing system that has already proven remarkably responsive to energy demands in our nation. The CLEAR Act would assign the government to the task of establishing a fair market value for onshore leases and change the current live auction system to a sealed bid system only. The government setting a market value is inherently contradictory concept. IPAMS believes the free enterprise system in a live auction system is the best method for determining fair market value rather than government bureaucracy.

Further, the CLEAR Act would destroy the integrity of the bidding system. Rather than a winning bid fairly translating into an issued lease, the bill leaves it to the discretion of the Interior Secretary. This would codify the disincentive to lease Federal minerals similar to that in the decision by the Secretary to reject 77 legitimate bids from the Utah December 2008 lease sale auction.

Enduring Resources was the successful bidder on four of those lease. Enduring's plan to develop domestic natural gas from these lands has now been canceled. No other bidding system from eBay to Fine Art Auctions allow a seller to withdraw bids from a sale after someone has fairly won the bidding process.

More importantly, independents reinvest 100 percent or more of their cash flow in the new development projects. The CLEAR Act would increase rental fees, minimum bonus bids and regulatory costs, and add a production incentive fee on nonproducing acres. With these additional expenses, producers will have less capital available to explore or and produce American energy. This is particularly impactful in this economic climate.

The DOI inspector general has cautioned that mandating production on Federal leases or increasing lease fees would not enhance production but will serve as a disincentive to invest in Federal leases.

The industry is already one of the largest non-income tax sources of Federal revenue. In Fiscal Year 2008, BLM spent over 90 mil-

lion to administer the onshore natural gas and oil program. From that small investment the Federal government gained $4.2 billion in royalties, rents and bonuses. For every dollar invested the program returned $46. Industry assumes all the cost and risk of exploring for and producing natural gas and oil, supplies needed domestic energy, provides millions of jobs, and pays a significant return to the American taxpayers.

I see that my time is over, and would refer the Committee to the recommendations contained in my written testimony. Thank you very much.

[The prepared statement of Mr. Campbell follows:]

Statement of Alex B. Campbell, on behalf of the Independent Petroleum Association of Mountain States

Mr. Chairman and Members of the Committee, thank you for the opportunity to be here today to discuss the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act and the effects that this legislation could have on small, independent producers of natural gas and oil who operate on public lands in the Intermountain West. These lands contain vast amounts of our domestic natural gas resources. As several prominent political leaders and academics have recently observed, the expanded use of domestic natural gas is the most obvious and cost-effective way, immediately and over the long term, to reduce greenhouse gas emissions and increase energy security.

Enduring Resources, LLC is a small independent natural gas exploration and development company headquartered in Denver, Colorado. Independent producers like Enduring are mostly small American businesses with an average of twelve employees, yet we drill 90% of U.S. wells and produce 82% of America's natural gas. Our current gross production from our properties is approximately 40 mcfd and we have 19 employees. We have extensive natural gas holdings in Utah and Texas. Approximately 80% of our Utah wells and leasehold are operated on public lands. I am the Vice President of Lands and have day-to-day responsibility to lease, site and permit our natural gas holdings.

I am here today on behalf of the Independent Petroleum Association of Mountain States (IPAMS). IPAMS is a non-profit organization representing more than 400 companies and over 150,000 workers engaged in all aspects of production of natural gas and oil in the Intermountain West. The Intermountain West supplies about 27% of America's natural gas and approximately 54% of that natural gas (and 34% of oil production in the Intermountain West) is on federal lands. The CLEAR Act would put at risk about 15% of America's natural gas supply.

The CLEAR Act as proposed would have significant negative impacts on the production of the Nation's supply of clean-burning natural gas. IPAMS believes that rather than "furthering the Nation's goals of securing a reliable and sustainable supply of American energy," as suggested by the Committee, the CLEAR Act would result in less American production of natural gas and oil and would put at risk many of the 267,000 industry jobs and the billions of dollars of investment in the Intermountain West at a time we can least afford such losses. As a result, the bill has the potential to disrupt the supply of American energy to millions of families, farmers, and small and large businesses. This proposal comes at a time when the President has challenged our Nation to focus on an increase of clean domestic energy supplies to address climate change, energy security and American jobs. This is the wrong answer to that challenge.

In sum, the CLEAR Act will: 1) add time-consuming delays by creating redundant and unnecessary layers of government bureaucracy and regulation; 2) institute policies that will hamper the action of efficient market mechanisms and decrease the integrity and transparency of leasing; 3) significantly increase costs to produce natural gas and oil on federal lands; and 4) fundamentally change the multiple-use management of public lands to an approach that will further restrict energy development—conventional and renewable.

Additional, Redundant Bureaucracy and Unnecessary Regulations

Western natural gas producers believe that one of the major problems with the CLEAR Act is the unnecessary and redundant red tape and bureaucracy that will be created. The CLEAR Act would create a new bureaucracy in the Department of the Interior (DOI)—the Office of Federal Energy and Minerals Leasing—that would combine certain Minerals Management Service (MMS) functions with the Bureau of

Land Management's (BLM) oil and gas program. CLEAR would add new regulatory requirements including new and unworkable notice requirements and counter-productive due diligence requirements. There is no demonstrable benefit to the environment or to increased supplies of domestic energy from these legislative provisions.

Office of Federal Energy and Minerals Leasing

The creation of the Office of Federal Energy and Mineral Leasing (Leasing Office) will create a new layer of bureaucracy to no purpose. Separating leasing from the overall land stewardship and multiple use management responsibilities of BLM will result in severed functionality and the lack of a holistic approach to land management. BLM and U.S. Forest Service land managers gain important knowledge of the lands they manage through the land planning process and their day-to day management activities. This proposal would sever that knowledge from the leasing activity. This cannot possibly benefit either the environment or domestic energy supplies. The Act will create two offices whose missions may conflict. For example, CLEAR would require BLM to set the conditions for surface occupancy, but would remove BLM from the issuance of the leases or Applications for Permit to Drill (APDs) that must comply with those conditions. In addition, the new office would require duplication of professional minerals staff in the agencies because only the oil and gas program, and not coal, geothermal, and other leasable minerals, will be administered by the new agency. This is not cost-effective government.

Diligent Development Requirements

Under Section 301 of the Act, DOI would have one year to define "diligent development," and then would require producers to meet certain "benchmarks" that "will ensure that leaseholders take all appropriate measures necessary to produce oil and gas from each lease that contains commercial quantities of oil and gas within the original term of the lease."

This provision displays a lack of understanding of the business of exploration and production of natural gas and oil. Finding and developing oil and gas is not a simple process. Vast differences in geology, topography, reservoir characteristics, composition of the resource, environmental considerations, market conditions, transportation of the resource to market and many other factors make each oil and gas lease unique. The financial aspect of this business is also critical in determining when, where and how a property will be developed. Acquisition of the capital necessary to develop the properties is a never-ending activity for the independent natural gas producer.

An energy company will make no return on its investment in the lease (lease bid and rental payments) until it produces a resource. Industry is already under an economic imperative to develop the purchased leases as soon as it makes economic and regulatory sense to do so. Producers are already making every effort to diligently develop leases where it makes economic sense to do so, but existing regulatory processes and special interest groups throw up roadblocks and delays at every stage of the process, making development on public lands long and arduous. Any definition of diligent development must include recognition of all the many preparatory activities companies are performing to begin ground-disturbing developments (environmental and cultural surveys, APD permits, National Environmental Policy Act (NEPA) compliance, Plans of Development) and the impediments to development beyond operators' control. The Committee should also recognize the budget implications of hiring a staff to review the diligent development plans required under the bill and to monitor the biannual reports required to be filed by all federal lessees.

Command and Control Planning: Best Management Practices

Another major deficiency of the proposed legislation is that it imposes centralized decision-making from Washington. The bill proposes to broaden top-down control by the government by directing the Secretary to impose one-size-fits-all best management practices (BMP) and benchmarks from Washington. This provision would separate the decision-making from those with the best information—the land managers on the ground, who are intimately familiar with the area's land, resources, and stakeholders.

I have extensive experience with developing BMPs to site and develop Enduring's federal holdings and have interacted with employees in BLM and EPA among other federal and state agencies in that process. I have found these employees to be hard working, dedicated and willing to sit down and problem-solve at all levels. They are open to new ideas to achieve enhanced environmental protections while developing federal natural gas as long as those ideas are within the confines of their regulatory authority. My concern today is how the CLEAR legislation will curtail the ability of the local managers to implement on-the-ground solutions. As the local administrators of these public lands, they have the best understanding of how to achieve

our country's goal to maximize domestic energy production while minimizing impacts on other resources. The CLEAR Act will dramatically change the ability of the local managers to best steward the public lands.

Additional Notice Requirements

Section 303 of the bill adds a new requirement that the Secretary shall provide 45 days notice prior to each sale to "all surface land owners in the area of the lands being offered for lease" and to the holders of "special recreation permits for commercial use, competitive events, and other organized activities on the lands being offered for lease." This new statutory mandate will increase the administrative costs of the sale and provide opportunities to challenge sales despite the Leasing Office's good faith efforts to comply. First of all, who are the surface owners "in the area of" the lands being offered for lease? The inference is that notice is required to not just surface owners of the severed federal minerals being offered, but also to anyone in the general vicinity. How will those surface owners be identified? Will the Leasing Office hire title examiners to identify all of the surface owners "in the area" of each sale? Will the Leasing Office rely on the records of the local tax assessor? If so, and the tax assessor's records are in error, is the notice invalid? How is the notice to be given to such persons? If it is not given by certified mail or other method with confirmed delivery, how can purchasers of the leases be assured that the Leasing Office satisfied this obligation? What if, despite its best efforts, the Leasing Office overlooks providing notice to one of the surface owners in "the area" or to one of the holders of special recreations permits? Is the resulting lease void for the agency's failure to comply with a statutory mandate?

This provision would create serious risks of title uncertainty. While oil and gas producers are accustomed to evaluating the geologic and engineering risks of drilling a well, they are not willing to invest millions of dollars to purchase a lease or drill a well in the face of clouds on the title. The challenges created by such a proposal were recently confirmed by BLM in the 2006 Split Estate Leasing Report to Congress required by Section 1835 of the Energy Policy Act of 2005 (EPAct 2005). Instead of recommending the adoption of a similar provision, BLM issued agency guidance and new information to split estate property owners to provide better and timely information to the public in the leasing process. (Instruction Memorandum 2007-165).

Market Distortion and Reducing the Integrity and Transparency of Leasing

The CLEAR Act directs fundamental changes to a federal oil and gas leasing system that has proved remarkably responsive to the energy demands of the Nation. It would separate critical leasing decisions from the best information. In our economic system the market—not government—is judged to have the best information on the value of a commodity. The CLEAR Act would reject that fundamental principle and direct the Secretary to set "market rates" for leases and change the competitive bidding system. The government setting a market value is an inherently contradictory concept. IPAMS believes the free enterprise system in a live auction system is the best method for determining fair market value, rather than government bureaucracy. The CLEAR Act would also reduce both the integrity and transparency of the leasing process.

The Competitive Bidding System

The CLEAR Act would change the existing system for bidding on federal leases from oral bids at a public sale to sealed bids, and would require the Leasing Office to evaluate the adequacy of bids before accepting them. IPAMS does not understand the impetus for these changes. In 2008, prior to the collapse of crude oil and natural gas prices, BLM was receiving record high bids for onshore leases, and we are unaware of any allegations that the U.S. has been receiving less than fair market value at the competitive lease sales. It is therefore unclear why a change should be made in a system that is working well for both industry and the U.S. Treasury. Moreover, when the Federal Onshore Oil and Gas Leasing Reform Act (authored in part by Representative Rahall) was enacted some 20 years ago, Congress chose to abandon the sealed bid procedure which had been followed for competitive leasing in known geologic structures (sometimes called a "KGS") in favor of oral bidding. In addition, Congress specified that the highest oral bid greater than the national minimum bid ($2.00 per acre) would be accepted "without evaluation of the value of the lands proposed for lease."

There are several drawbacks to a system which attempts to second-guess the market price as established by public bidding. First, it will require increased staffing of the proposed Leasing Office with professional geologists and engineers to prepare the necessary evaluations of bid adequacy, which will require increased agency budget. Second, regardless of the skills of the Leasing Office staff conducting such

evaluations, that staff will never have the same quality of information available to it as will industry. The oil and gas business is highly competitive and companies invest significant sums in proprietary exploration and data collection. Third, in wildcat areas where there is little well control data available, the fair market value of a tract will be difficult for federal geologists to determine. Lands in undeveloped areas may have only a nominal value unless geologists from several companies have concurrently developed an exploration concept that creates a speculative higher value for the lands. Unlike coal, where knowledge about the resource is generally available to all participants and where the large up-front investment necessary to develop a mine limits the number of competing bidders, knowledge about the oil and gas resource, if any, present in a wildcat area is often limited to the imagination of the geologists working the area. Fourth, the number of entities competing at the sale is very large, so the likelihood that a high bid at a public sale does not represent fair market value is very low. Fifth, industry reacts quickly to market changes. For example, if the Leasing Office staff develops a fair market value for an area in advance of a sale, falling prices or the development of technical data (such as new information showing that production from a particular formation is more short-lived than expected) could result in the industry assigning a lower value to the acreage than the Leasing Office's "fair market value." The result would be rejection of bids that, in fact, represent fair market value as of the date of the sale.

History supports this concern over post-sale bid evaluations. BLM had difficulty defending its decisions with respect to the adequacy of competitive bids under the old KGS sealed-bid system which Congress eliminated in 1987. A good example of the difficulties can be found in the decision of the Interior Board of Land Appeals (IBLA) in the case of Harold Green v. BLM, 93 IBLA 237 (1986). There, a sealed bid of $22.75 per acre made at a competitive sale held in February of 1983 was rejected as inadequate. The high bidder appealed that rejection to the IBLA, which referred the matter to a hearing before an administrative law judge. That judge concluded that BLM did not justify its rejection of the high bid and directed the agency to accept the bid. BLM appealed the administrative law judge's decision to the IBLA which decided (3 1/2 years after the sale) that BLM had, in fact, justified its rejection of the bid, yet each of the three judges separately suggested ways for BLM to improve its bid evaluation process. There simply is no reason to return to the costs and delays of a bid evaluation requirement which Congress discarded 20 years ago.

Integrity and Transparency of Lease Sales

Another effect of the CLEAR Act is the destruction of the integrity of the bidding system. Rather than a winning bid fairly translating into an issued lease, the bill leaves it to the discretion of the Interior Secretary whether to accept a bid within 90 days after the auction. The bill would thus codify the uncertainty and disincentive to lease federal minerals that resulted from the decision of Interior Secretary Salazar to reject 77 legitimate bids made at the Utah December 2008 lease sale auction. Enduring Resources was the successful bidder on four of those leases and had carefully planned how those leases would fit into its existing natural gas developments. The leases have been withdrawn and Enduring's plans to develop domestic natural gas resources for the Nation from these lands have been cancelled.

Currently the Mineral Leasing Act requires DOI to issue leases within 60 days of payment of the bonus so that the winning bidder receives the property that he/she has fairly purchased. If passed, the CLEAR Act would institute a subjective system, which is prone to second-guessing and the politics of the moment. No other bidding system, from eBay to fine art auctions, allows a seller to withdraw goods from a sale after someone has fairly won the bidding process.

As mentioned above, the oil and gas business is highly competitive and companies are reluctant to show their hand by bidding at a sale only to then have the Department determine that it will not issue the lease. Furthermore, even though existing law provides that the Secretary of the Interior shall issue a lease within 60 days following payment of the balance of the bonus, that statutory deadline is frequently missed, meaning that the bidder's money can be tied up, without interest, for many months. In fact, currently DOI is holding about $100 million worth of lease bids in Colorado, Utah and Wyoming while it processes lease protests. The companies do not have the leases, but the government holds its money. That is significant company capital being held by the government in a non-productive capacity that could be used to find and produce more American energy.

Under the CLEAR Act, the Secretary "shall decide whether to accept a bid and issue a lease" within 90 days following payment of the bonus. The bill does not contain any standards upon which the Secretary shall base his decision to issue or not issue a lease. That decision should be made prior to the sale. Bidders spend significant sums in the form of professional staff time spent identifying whether lands of-

fered for lease by BLM can be economically developed under the terms and stipulations described in the sale notice and formulating their maximum bids based on available geologic and engineering data. There is little incentive to invest that time and effort, and disclose your analysis in the form of the amount of your bid made at a public sale, only to have the Secretary decide several months later not to issue a lease on the lands advertised for sale.

Increased Costs

In order to maintain natural gas supplies to meet American's every-increasing demand for this clean energy source, independents must reinvest 100% or more of their cash flow into new development projects. Because the CLEAR Act would increase rental fees, minimum bonus bids, and regulatory costs, natural gas and oil producers will have less capital available to explore for and produce American energy. This is particularly true in this economic climate where credit is tight and the price of both oil and gas is low. The DOI Inspector General (IG) has cautioned that mandating production on federal leases or increasing lease fees would not enhance production, but will serve as a disincentive to investment in federal leases.

In addition, the CLEAR Act also proposes a "production incentive fee" of $4 for non-producing acres. First of all, a lessee is already required to develop oil and gas within the original term of the lease because if it does not, the lease terminates. Second, how will the agency determine which leases "contain commercial quantities of oil and gas?" Unless a newly acquired lease offsets existing production (and even sometimes when it does), there is no guarantee that any particular lease contains commercial quantities of oil and gas until a well is drilled. Although advances in geophysical technology have reduced some of the exploration risk, there are still many dry holes drilled on federal lands. The average rate of success for wildcat wells is only 10-20% and for exploratory wells 25-50%.

The CLEAR Act proposed "production incentive fee" of $4 for non-producing acres is particularly troubling when the DOI IG found such problems with data integrity and information systems at MMS and BLM that DOI cannot say with certainty how many leases are producing. IPAMS recommends that DOI fix its data problems before trying to impose another cost on industry. Furthermore, since many leases are held up from production because of required environmental studies, timing restrictions for surface-disturbing activities, government processing delays and legal challenges, a production "incentive" fee would be inequitable if these factors were not considered.

The natural gas and oil industry is already one of the largest non-income tax sources of federal revenue. In FY2008, BLM spent about $90 million to administer the onshore natural gas and oil program. From that small investment, the federal government gained $4.2 billion in royalties, rents, and bonuses. For every dollar invested, the oil and natural gas program returned $46.

In spite of the fact that oil and natural gas companies more than pay for this program, companies must also pay a $4,000 fee per APD, whether or not the permit is granted. In the Fiscal Year 2010 budget, that fee is proposed to increase to $6,500 without any justification for the increase and again in an economic climate when independent producers like Enduring can ill afford it. Industry assumes all the cost and risk of exploring for and producing natural gas and oil, provides a needed supply of domestic energy and pays a significant return to the American taxpayer.

The CLEAR Act would also result in higher regulatory costs and increase permitting delays by eliminating Section 390 Categorical Exclusions (CX)) of EPAct 2005. EPAct 2005 mandated the use of CXs to enable energy development where the environmental impact is minor, and where drilling was analyzed in a NEPA document as a reasonably foreseeable activity. In 2005, Congress recognized that this provision would encourage the timely development of domestic energy resources and concluded that in the narrowly described circumstances environmental impacts would be insignificant. A requirement for an "extraordinary circumstances" analysis would defeat the intent of the statute.

The CX provision was designed to limit redundant environmental analysis, free federal land managers to perform other tasks and encourage industry to limit environmental impact by drilling on existing well sites. CXs enable federal land managers to focus on activities like inspections and monitoring that lead to actual, on-the-ground environmental protection and companies can timely deliver domestic energy resources to consumers CXs do eliminate redundant NEPA and enable energy development where the impact is minimal. The CX tool is an established NEPA compliance tool and indeed is one of the most frequently used NEPA compliance options by agencies across the federal government. The EPAct 390 CXs were narrowly drafted and are being cautiously implemented by BLM.

Changing the Multiple Use Management of Public Lands

In addition to creating an entirely new agency to issue and administer oil and gas leases, adding burdensome regulations and dramatically changing the federal leasing process, the Act would impose on BLM and the U.S. Forest Service the obligation to review and approve "general land use plans that identify areas in which energy development would not conflict with other land uses." This requirement would seem to trump, with respect to "energy development," the multiple use management directive contained in BLM's organic act, the Federal Land Policy and Management Act (FLPMA), and the multiple-use sustained yield statute governing National Forest System lands. "Energy development" is not defined in the bill and so would apply to all energy development on public lands, including coal, geothermal, wind, solar and oil and gas. Because the bill does not define exactly what energy development activities are deemed to "conflict" with other land uses, this provision will provide ample opportunities for challenges to plans by, for example, livestock producers who prefer that no energy development occur on their grazing permits, hunters who want no energy development in any area where big game might be found and surrounding landowners who dislike derricks, turbines or solar arrays. BLM and the Forest Service already strive to achieve "the enormously complicated task of striking a balance among the many competing uses to which land can be put" (as the Supreme Court noted in Norton v. Southern Utah Wilderness Alliance) and that task should not be further complicated by adding a seemingly contradictory requirement.

Operators in the West already experience lengthy planning delays to energy projects. Project-specific Environmental Assessments (EA) and Environmental Impact Statements (EIS) are routinely taking three to over five years to complete and BLM Resource Management Plan NEPA analyses have taken five years to close to a decade. Enduring has a sixty-four well EA that has taken over five years already. IPAMS recommends that instead of creating additional planning requirements, Congress should direct federal land managers to follow reasonable and time-sensitive guidelines for NEPA documents. The Council on Environmental Quality rules on NEPA documents contemplate a focused and timely process. Implementing the intent of those rules would free up the time and resources for land managers to engage in activities that truly benefit the environment, such as monitoring and enforcement, rather than endless documentation.

Recommendations

In order to truly increase energy security and address global warming in a meaningful way, IPAMS recommends the following measures to increase production of natural gas on public lands:

- Congress should consider ways to shorten the timeframe for environmental analysis. The bureaucratic delays and runaway costs associated with more environmental studies provide no additional environmental protection, but would serve to restrict the development of new supplies of domestic oil and natural gas.
- Congress should ensure the DOI does not continue to restrict leasing of public lands by failing to timely complete its administrative responsibilities.
- Congress should carefully consider how new wilderness areas could limit America's ability to meet its future energy needs.
- Congress should increase the budget for the BLM oil and natural gas program to ensure the bureau has the necessary staff and resources to process permits to drill and rights of way for gathering and pipeline infrastructure so that new supplies of natural gas and oil can be brought to the market.
- Instead of creating new redundant processes, Congress should work with Interior and industry to improve existing processes so that public resources are made available to the nation in a timely and cost-effective manner.

I have attached for your convenience specific comments and concerns of IPAMS' members on the provisions of the CLEAR Act.

Thank you.

[NOTE: The attachment has been retained in the Committee's official files.]

Response to questions submitted for the record by Alex B. Campbell, Enduring Resources, on Behalf of the Independent Petroleum Association of Mountain States

Questions from the Majority:

1. **Mr. Campbell, your testimony states, "no other bidding system, from eBay to fine art auctions, allows a seller to withdraw goods from a sale after someone has fairly won the bidding process." In fact, the federal offshore leasing system works exactly that way: the Secretary has the discretion to either issue or not issue leases to the high bidders on a lease tract, and typically exercises that discretion based on an assessment of whether or not the high bid met a minimum acceptable bid for that tract. Such a system, which also includes sealed bidding, has been in place on the Outer Continental Shelf for thirty years. Do you stand by the statement in your testimony as quoted in this question? And why do you believe that a system that has been so effective offshore would not work onshore? Do you have any evidence or data to support your theories?**

Answer: I stand by my statement. It is common for many types of auctions to specify a minimum bid, as is done for off-shore leasing, which if not met, means that the item is not sold. The CLEAR Act does not specify a minimum bidding system at all, just an arbitrary decision by the Secretary to reject bids for some unspecified reason. The eBay and art auction examples likewise often set minimum bids, but don't enable a seller to arbitrarily withdraw goods from a legitimate auction after the auction ends. This is basic contract law—an offer is made with specific terms, an acceptance is tendered meeting those terms, the result is a contract between the parties for the sale according to the agreed upon terms. The change proposed in the CLEAR Act would introduce unacceptable subjectivity into the bidding system.

The current on-shore live-auction system was developed under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 that was sponsored by Senator Dale Bumpers (D-AR) specifically to make federal onshore leasing more competitive and transparent. Under the current live auction system, the market, through competitive bidders, sets the price of a lease. Under the previous Known Geologic Structure (KGS) sealed-bid leasing system, government employees, without access to the most current geologic, drilling and market information, made the determination of where the resource was and what the fair market value should be. In order to provide a value for leases by government mandate rather than the market, the government would have to hire numerous geologists and auditors to actively and periodically assess the resource, and monitor markets to arrive at a value. IPAMS believes that's a job more efficiently and effectively done by private industry working through a competitive free-market system.

A sealed bid system does indeed exist for off-shore leasing, but there are many differences in the types and size of reserves, and the amount of seismic surveying available offshore compared to onshore. Offshore reserves in the Gulf of Mexico are generally large conventional reserves that have been studied extensively over several decades and large amounts of seismic data are available, whereas onshore leases generally contain unconventional reserves without extensive seismic mapping.

The offshore process also involves a detailed process for determining which bids to accept based on bid amount, not an unspecified reason as the CLEAR Act provides. If a winning bid for off-shore resources is not immediately accepted based on specific, subjective criteria, it is evaluated in more depth by MMS geologists, geophysicists, petroleum engineers, economists and computer scientists, who prepare detailed estimates of the economic value of oil and gas resources on each tract. Bids may only be rejected by MMS based on rigorous value criteria, not for subjective reasons by the decision-maker. Furthermore, companies have fifteen days to appeal any rejection of a bid by MMS. The CLEAR Act neither includes objective criteria for bid rejection nor a right to appeal.

Finally, with today's unconventional onshore resources and industry's ability to apply new technology and develop reserves that even five years ago were not possible, a government bureaucracy mandating where to develop and at what price is especially out-dated and inefficient. Examples abound where industry has responded to market signals of tight supplies and higher prices to assume the risk and apply new technology to develop natural gas and oil reserves previously thought unrecoverable. The potential of the Bakken Shale in North Dakota has only been fully realized within the last three years. Other shales throughout the United States such as the Marcellus Shale in Appalachia and the Haynesville in Louisiana have just

started to be exploited within the last five years. Ten years ago the Fort Worth basin in Texas was considered a rapidly declining basin until producers figured out how to exploit the Barnett Shale and dramatically increased production from that basin. Ten years ago, the unconventional tight sands of the Pinedale Anticline were just beginning to be tapped, and today it is the second largest natural gas field in the US. These are all examples of what happens when industry operating in a free enterprise market system is able to apply geological and technical know-how with the right economic conditions to produce domestic energy.

2. Mr. Campbell, your testimony states, "the EPAct 390 CXs were narrowly drafted and are being cautiously implemented by BLM." A position paper produced under the IPAMS letterhead, states that, "the only abuse of the system is that BLM consistently does not utilize these Congressionally mandated CXs, even when companies meet all the criteria for their use." However, on September 16, 2009, the Government Accountability Office (GAO) issued a report (GAO-09-872) that found that, "BLM's use of Section 390 categorical exclusions has frequently been out of compliance with both the law and BLM's implementing guidance," and that "violations we found thwarted NEPA's twin aims of ensuring that both BLM and the public are fully informed of the environmental consequences of BLM's actions." In the report, the GAO reports finding violations of the law at 18 BLM field offices, examples of noncompliance with BLM guidance at 22 field offices, and found that the law contained "vague or nonexistent definitions". Given the findings of this non-partisan government watchdog, do you stand by your statement that the law was "narrowly drafted" and that the Section 390 Categorical Exclusions are being "cautiously implemented" by BLM? If so, why and what evidence or data do you have to support your opinion?

Answer: I stand by my statement that the Section 390 Categorical Exclusions (CX) are narrowly drafted and are being cautiously implemented by BLM. A careful reading of the GAO report finds this non-partisan government watch-dog concluded that, "Overall, we found many more examples of noncompliance with guidance than violations of the law. We did not find intentional actions on the part of BLM staff to circumvent the law; rather, our findings reflect what appear to be honest mistakes stemming from confusion in implementing a new law with evolving guidance." [1]

Further analysis of the GAO report shows that from a random sample of 300 approved CXs, these were the types and percentages of violations found:

- Using CX2, CX3, or CX4 beyond the five-year timeframe: 3 instances, a 1% sample error rate
- Using CX2 or CX3 to approve an activity other than an oil or gas well: 7 instances, 2.3% error rate
- Using CX2 on a well pad that did not have an existing well: 5 instances, 1.7% error rate
- Using CX5 for projects that are not "maintenance of a minor activity": 4 instances, 1.3% error rate
- Using CX 3 without an approved environmental document: 1 instance, 0.3% error rate
- Cumulative sample error rate of 6.7%.

While IPAMS is concerned with any violation of the law, we agree with GAO that these errors stem from confusion over implementing a new program, which is not uncommon with any new government program. These errors can be cleared up with revised guidance, implementation templates, and better oversight from state offices, as recommended by GAO.

GAO also provides details on several other problems with implementation, but these are clearly administrative, and did not result in violations of the law. Indeed, the last two cases cited below resulted in more restrictive use of the CXs than required by law. These administrative errors include:

- Using one form to document CXs for multiple wells, all of which individually were legitimate uses of CXs—15 instances
- Documents without the expiration date stated, but with no legal violations—95 instances
- CX decision documents that did not adequately provide supporting documentation—no number of instances given

[1] United States Government Accountability Office, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development Under Section 390 of the Act, GAO-09-872, September 2009, page 29.

- Using the incorrect date to start the five-year timeframe, resulting in less time for using the CX than that allowed by law—6 instances
- Applying the CX extraordinary circumstances checklist, which specifically is not required for statutory CXs—21 instances.

Again, these administrative errors can be easily cleared up with training and better oversight, but are clearly not abuses of the law.

Indeed, to further support my statement that BLM was cautious and overly conservative in their use of CXs, the GAO found many examples where BLM failed to use an applicable CX, despite the mandate in EPAct. GAO ignored BLM's frequent violations or failure to fully utilize the provisions of the law when CXs were not used for projects that met the criteria mandated by Congress. For example, GAO didn't even investigate why five busy field offices that process APDs - Miles City, MT; Great Falls, MT; Rock Springs, WY; Newcastle, WY; and Roswell, NM—failed to approve a single CX. IPAMS would be very interested in seeing the data on cases where CXs were not used, even when the statutory criteria were met.

The Section 390 CXs were narrowly drafted by Congress to encourage development of natural gas and oil in cases where the environmental impact is minimal, where NEPA analysis has already been done within the last five years, and on existing well pads. CXs enable federal land managers to focus on activities like inspections and monitoring that lead to actual, on-the-ground environmental protection rather than on redundant NEPA documentation.

3. Mr. Campbell, you testified in opposition to the creation of the Office of Federal Energy and Minerals Leasing, due in part because you believe that it would sever the knowledge that Forest Service land managers have over their lands from leasing decisions. Perhaps you are not aware that currently the Forest Service does not actually conduct the oil and gas leasing program on its lands. Instead, BLM acts as a leasing agent for the Forest Service on National Forest lands. If enacted, staff of the proposed new office would then simply do for the Forest Service and BLM what the BLM currently does for the Forest Service in terms of oil and gas leasing activity. Both the BLM and the Forest Service would continue to act as land managers, making land use decisions, overseeing environmental and public safety compliance, and other appropriate activities. The BLM has received considerable and consistent criticism of the manner in which it conducts the oil and gas leasing program, as testified to by the Government Accountability Office and the Inspector General. You may wish to review their findings prior to responding to this question: In light of the long-standing and systemic deficiencies in the BLM leasing program, repeatedly uncovered by the GAO and IG, and the fact that the BLM and Forest Service would retain their primacy as land managers under H.R. 3534, do you continue to object to the transfer of certain leasing activities to the new office, or for that matter, to the MMS?

Answer: IPAMS is not alone in it's concern with further severing the leasing function from BLM's overall land stewardship. The Wilderness Society is also concerned about the CLEAR Act's potential to create "confusion and conflicts between the two agencies" as quoted in Platts Inside Energy publication of September 14, 2009, page 18. "Dave Alberswerth [Wilderness Society]...said his organization had reservations about making the new agency responsible for onshore leasing decisions, rather than leaving those functions with BLM." Obviously BLM today handles leasing of the federal mineral estate on Forest Service lands in close coordination with Forest Service employees. The Forest Service has an entire Minerals & Geology section to address the development of oil, gas and geothermal on Forest Service lands. The CLEAR Act would add yet another organization, so that BLM's leasing would be severed from its overall land management stewardship, while similarly Forest Service lands would have two organizations to coordinate with on oil and gas issues. The CLEAR Act would indeed further distance Forest Service and BLM land managers from permitting and leasing of oil and gas activities.

While the CLEAR Act supposedly would retain BLM primacy over land management, the Act would remove from BLM certain critical functions that go hand-in-hand with leasing and permitting, resulting in confusion. How would BLM establish and enforce lease stipulations, conditions for surface occupancy and reclamation requirements, as required in Section 101, if it is not responsible for leasing and issuing permits? The split in activities doesn't seem logical to IPAMS.

As far as recent GAO reports, we would argue that these reports do not demonstrate "long-standing deficiencies" in Interior's management of on-shore oil and gas leasing, but isolated issues that can be best addressed through targeted, focused

actions by BLM or MMS. A wholesale reorganization of the two bureaus and the creation of an additional layer of process onto an already process-laden leasing activity is simply not warranted. For example, as our response above on the GAO's categorical exclusions report illustrates, this study did not find long-standing or major deficiencies, but rather mostly administrative error that GAO found could be rectified with better oversight. Creating a new office is not necessary for exercising better oversight and implementing GAO's recommendations. In an October 2008 GAO report entitled "Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development," the GAO again does not find long-standing, systemic deficiencies in the BLM leasing program, but rather that DOI should develop a strategy to evaluate options to encourage faster development of its oil and gas leases.

Similarly, the Department of the Interior Inspector General (IG) has not argued for whole-sale change to Interior's oil and gas leasing program. In a 2004 report, "Audit of Oil and Gas Permitting Process, Bureau of Land Management", the IG made a series of targeted recommendations to improve the management of the APD and associated NEPA process to make it more efficient. The DOI Inspector General also found in a February 2009 report entitled Oil and Gas Production on Federal Leases: No Simple Answer that mandating production on all federal leases or increasing lease fees, as suggested by GAO, could actually disincentivize production. The CLEAR Act contains many provisions which would indeed disincentivize industry, such as mandating development according to centrally-imposed benchmarks divorced from conditions on the ground and additional fees for non-producing acres.

The DOI IG further found in the above cited 2009 report that because of severe data integrity problems and incompatible systems at DOI, the usefulness of data showing which acres are producing or non-producing is suspect. DOI recommends fixing these data and information systems. IPAMS agrees with that recommendation, particularly since it would give DOI visibility on all the activities companies are taking to diligently develop their leases and would highlight the obstacles created by the government and legal challenges that are preventing timely development of America's energy supplies. A time-consuming and whole-sale bureaucratic reorganization is not necessary to fix data and systems problems.

Questions from the Minority:

1. **Industry is often criticized for not diligently developing on federal leases. MMS reported last year that about 60% of leases are non-producing. Why are you concerned with attempts by Congress and DOI to slow the leasing process when companies already seem to have plenty of leases?**

Answer: DOI does not track data on the full range of activities that are occurring on leases, such as geophysical exploration, environmental analyses, permitting, wildlife and cultural resource surveying, and the numerous other activities necessary before a well is drilled. Therefore, although companies are diligently trying to develop their leases, DOI does not give any visibility to all the activities that are occurring on leases. I call your attention to the IPAMS leasing timeline attached to my written testimony which shows many of the activities undertaken on leases and a realistic timeline for those activities. A company may be diligently attempting to develop natural gas or oil on its leases but not be able to start production until near the end of the ten year lease term because the process on public lands is much more lengthy and arduous than on private or state lands. DOI does not give any visibility to all this activity.

There are many roadblocks that are continually thrown up to prevent operators from developing their leases. Government delays hold up environmental analyses, well permits, and rights of way. Environmental analyses are routinely taking five to six years to complete. Besides government delay, legal challenges from environmental groups hold up natural gas projects. Enduring has had a relatively small 64 well project held up since 2004 because of legal challenges and government delays.

Furthermore, the often repeated criticism that 60% of leases are non-producing doesn't appear to be based on credible data. A February 2009 DOI Inspector General report[2] found that inconsistent procedures and incomplete, inaccurate records "call into question both the integrity and the usefulness" of MMS and BLM data. Inconsistencies between MMS and BLM mean that leases identified by BLM as producing may be reported as non-producing by MMS, and vice versa. IPAMS believes that DOI should fix its information systems and track all the activities occurring on

[2] Oil and Gas Production on Federal Leases: No Simple Answer, U.S. Department of the Interior, Office of Inspector General, Royalty Initiatives Group, February 27, 2009.

leases rather than imposing fees on non-producing leases, as the CLEAR Act would do.

2. Explain to me why companies are only developing on about 40% of leases? Why do companies sit on their leases for so long?

Answer: That statistic may not be accurate, as mentioned in the response to question 1 above, and does not reflect the myriad activities operators are conducting on their leases such as environmental analysis, wildlife and cultural surveys, seismic exploration, and permitting.

An energy company will make no return on its investment for a lease (lease bid and rental payments) until it produces a resource. Industry is already under an economic imperative to develop the purchased leases as soon as it makes economic and regulatory sense to do so. Producers are already making every effort to diligently develop leases where it makes economic sense to do so, but existing regulatory processes and special interest groups throw up roadblocks and delays at every stage of the process, making development on public lands long and arduous. The 40% statistic does not include a recognition of the myriad preparatory activities companies are performing before drilling commences and the impediments to development beyond operators' control.

3. How will additional bureaucratic requirements to report biennially on benchmarks, create surface use plans of operation, and additional documentation under the National Environmental Policy Act (NEPA) affect your ability to develop your leases?

Answer: Developing on federal lands already carries extensive additional regulatory requirements, such as environmental analysis under NEPA. Additional reporting on whether my company is meeting certain benchmarks will not contribute to us finding and producing American energy, but will require additional resources, time and effort spent on regulatory requirements. Without knowing the nature and extent of the benchmarks, it is difficult to assess what the additional costs and time will be, but IPAMS is concerned that the reporting process would be overly burdensome. If such a requirement is put in place, IPAMS recommends a quick status report of what activities have been undertaken and what obstacles are being imposed and from where (e.g., legal challenges from environmental groups, government delay on NEPA documents, etc).

4. What does an increase in rental rates and bonus fees, and the addition of a "production incentive fee" mean for your company? How would that affect your ability to acquire leaseholds, and your drilling budget? Why shouldn't oil and gas companies pay for the full cost of developing on public lands?

Answer: A February 2009 DOI Inspector General report found that "...mandating production on all federal leases or increasing lease fees would not necessarily enhance production, and could, in fact, reduce industry interest in federal leases." IPAMS agrees that increased fees are a disincentive to responsible energy development on non-park, non-wilderness federal lands. Independents like Enduring Resources already reinvest over 100% of cash flow back into developing more natural gas and oil. With the low wellhead natural gas price available in the Uinta Basin of Utah, and the high costs due to permitting delays on federal lands, it is currently uneconomic for my company to invest additional drilling dollars in that Basin. Even during the good times, increases in fees and regulatory costs have a direct impact on our bottom line, and the capital available to reinvest in developing more American energy resources.

Companies are already paying the full cost of developing on public lands. BLM spent about $90 million in FY2008 to administer the onshore natural gas and oil program in 2008. From that small investment, the federal government gained $4.2 billion in royalties, rents, and bonuses. For every dollar invested, the oil and gas program returned $46. In addition to providing government with such a good return on investment, industry pays a $4,000 fee per Application for Permit to Drill, whether or not the permit is granted. That fee is proposed to increase to $6,500 for Fiscal Year 2010 without any justification for the increase. Industry assumes all the cost and risk of exploring for and producing natural gas and oil, supplies needed domestic energy, provides millions of jobs, and pays a significant return to the American taxpayer.

5. Section 390 Categorical Exclusions have been characterized as an unwarranted end-run around environmental analysis. Why does industry need categorical exclusions? Why shouldn't companies have to do environmental analysis before drilling?

Answer: Section 390 CXs only apply when the environmental impact is minor, such as on existing well pads, and where drilling was analyzed in a document required under NEPA. CXs don't eliminate environmental analysis - they merely reduce the amount of redundant environmental analysis under NEPA. Congress mandated the use of CXs because it recognized they would encourage the timely development of domestic energy resources in situations where the environmental impact is minimal, and encourage industry to limit environmental impact by drilling on existing well sites. CXs enable federal land managers to focus on activities like inspections and monitoring that lead to actual, on-the-ground environmental protection. Rather than an "unwarranted end-run around long-standing environmental statutes" as they have been characterized by this committee, Section 390 CXs were narrowly drafted and are being cautiously implemented by BLM. IPAMS believes the only abuse of the CXs is BLM's failure to use CXs even when companies meet all the criteria.

Enduring has not benefitted very much from Section 390 CXs because of BLM's unwillingness to use them.

6. In many instances, companies will acquire some leases, but attempt to acquire a larger leasehold before commencing drilling. Why should a company delay commencing operations on some leases until others are acquired, and what challenges are companies facing in order to do so?

Answer: In order to justify the risk and high cost of drilling on public lands, operators must often acquire leases from several lease sales in order to have a sufficient leasehold to commence operations. Protests of lease sales slow the diligent development of natural gas and oil on federal lands because they hinder the ability of operators to acquire leases in a timely manner. Last year, 100% of lease sales were protested, including close to 100% of the parcels offered. It often takes years to acquire a leasehold because of all the challenges. To compound the matter, DOI is currently holding about $100 million of bonus bids and rents for unissued and suspended leases in Colorado, Utah and Wyoming alone. This is significant company capital being held in an unproductive capacity by the government, which is especially egregious in these hard economic times. It all equates to more roadblocks to our ability to produce American energy.

7. The CLEAR Act calls for companies to track and report biennially on as-yet-to-be-determined benchmarks set by DOI in Washington. What would this additional burden mean for your company?

Answer: Requiring a diligent development plan showing how companies are meeting benchmarks will produce more regulatory overhead, but not contribute to finding and producing new energy supplies. Leaseholders already submit plans when they initiate project-level analysis under the National Environmental Policy Act (NEPA). It's not clear how these proposed benchmark reports would interact with NEPA or what useful purpose they would serve.

There is one thing that would be useful from such reports if the data were gathered and available to the public in an easily accessible manner—a big "if" given the current state of DOI information systems. Giving visibility to those activities would help operators defend against inequitable charges that they are not diligently developing their leases.

8. The CLEAR Act calls for companies to follow best management practices (BMP) determined by DOI. Why is there any opposition to BMPs? Doesn't your company want to operate in the most environmentally sound manner possible?

Answer: Enduring and the vast majority of Rockies producers work very hard to ensure they operate in an environmentally-responsible manner, with as small a footprint as possible. Rockies producers have worked with BLM, the Department of Energy and the Western Governor's Association, among others, to develop BMPs that can be used as conditions and circumstances warrant. That experience and our day-to-day operations with state and federal regulators and surface owners lead us to conclude that determining the optimal way to operate is done best not by fiat from Washington, but in cooperation with local federal land managers with on the ground expertise in the areas where they live and work. Every area is different, and different lands and ecosystems require tailored practices.

I have extensive experience with developing BMPs to site and develop Enduring's federal holdings and have interacted extensively with field-level federal land managers and state and federal regulatory agencies. I have found these employees to be hard working, dedicated and willing to sit down and problem-solve at all levels. They are open to new ideas to achieve enhanced environmental protections while developing federal natural gas as long as those ideas are within the confines of their regulatory authority. Often centrally imposed BMPs don't make sense to a particular area.

I believe the CLEAR Act would curtail the ability of the local managers to implement on-the-ground solutions. As the local administrators of these public lands, they have the best understanding of how to achieve our country's goal to maximize domestic energy production while minimizing impacts on other resources. The CLEAR Act will dramatically change the ability of the local managers to best steward the public lands.

9. In the State of Colorado, the BLM recently concluded this past week, the first of what should be a series of lease sales conducted online via the Oil and Gas Lease Internet Auction Pilot (OGLIAP) program. The OGLIAP internet auction website has been developed by the BLM over the past nine months to investigate the benefits and feasibility of conducting the Federal Lease Auction process online. The website has been available for approximately two months, giving potential leasing citizens the opportunity to review the parcels being offered by the BLM Colorado State Office in the initial lease sale of approximately 28 parcels. The website offers a fully online and paper less system for providing parcel information and bidding capabilities. The BLM's website vendor has worked with the BLM to produce and deliver several presentations to both industry representatives and the leasing public in the form of user workshops. Based on the response to this new program appears to be positive as some in the industry has been quick to embrace a new way of participating in BLM lease auctions. By bringing the auction process online, a host of potential benefits have been identified by the BLM and bidder's alike including increased competition for parcels and elimination of travel costs for bidders. In addition, by operating the lease sale online, the BLM's auction process is increasingly transparent for all parties involved. Would you provide the Committee an overview of how the recent auction n played out and what industry's opinion of moving towards this type of auction process verse a sealed bid process as proposed under H.R. 3534? What are the advantages of this program to industry and to BLM in your opinion? Would industry support the continuation of this program and would industry support conducting additional lease sales in the next 12 months in other states? If so, which states would be good candidates to participate?

Answer: I have not had time to review the results of the auction. Some in industry may prefer a live auction, others may not. In general, I prefer the live auction, as it enables bidders to look into their competitors eyes in head-to-head bidding. I think the BLM may miss additional revenue potential inherent to the bidding excitement that can occur when people in one place are focused on one parcel in a live auction atmosphere.

An open online auction system is better than the sealed bid system proposed in the CLEAR Act, but IPAMS has not developed a position yet on online auctions as a replacement for live auctions. There is a report from EnergyNet.com, Inc. that includes statistics on the on-line auction results to which the committee may wish to refer. We have attached this report.

The CHAIRMAN. Dr. Stover.

STATEMENT OF DR. DENNIS E. STOVER, PH.D., EXECUTIVE VICE PRESIDENT, AMERICAS URANIUM ONE

Mr. STOVER. Mr. Chairman, Members of the Committee, I am Dennis Stover. I serve as Executive Vice President for the Americas Uranium One, Inc. I appreciate the opportunity to testify today on behalf of the National Mining Association about the negative impacts of removing uranium from the auspices of the mining law and making it leasable under the Mineral Leasing Act.

Uranium One is the seventh largest uranium mining company in the world. We are currently licensing three new institute recovery uranium mines, two in Wyoming and one in Texas. We are reactivating our conventional uranium mill and permitting an underground mine in Utah. Much of our mineral rights nationwide are tied to Federal lands.

Last month we paid nearly $1.4 million to the U.S. Bureau of Land Management in annual maintenance fees for our unpatented mining claims. The vast majority of these holdings are exploratory properties that will require extensive exploration expenditures over several years to test and then confirm the presence of economic quantities of uranium. Only then will we begin the multi-year licensing and permitting process that leads to construction and operation of commercial mining facilities. All the while annual claim maintenance payments will continue to flow to the BLM.

In my view, the proposal to make uranium a leasable mineral will not only negatively impact the domestic uranium mining industry, but also the economy and national security of the U.S. There are no incentives to explore and no preferential leasing rights for the company that makes the discovery contained in the bill. This will put an end to the growth of a viable domestic uranium mining industry, an industry that creates high-paying jobs with good benefits, and provides energy resources critical to meeting our nation's dual goals of decreasing our reliance on foreign energy supplies and drastically reducing domestic greenhouse gas emissions.

A common argument in favor of leasing uranium is that uranium is a fuel mineral and therefore should be governed, like fossil fuels such as oil, gas and coal, under the Mineral Leasing Act. This assumption ignores the fact that uranium in fact is a metal.

I began my professional career as an oil and gas reservoir engineer with a major oil company. Now after 30 years in uranium mining I can assure you that uranium geology, geochemistry, and production methods are totally different from those of coal, oil and gas. Further, a leasing system is not needed to address the question of the lack of fair return on uranium production from Federal lands. For the last decade the mining industry has fully supported the payment of a reasonable net proceeds type royalty from production on Federal lands through amendments to the general mining law.

The U.S. currently consumes about 56 million pounds of uranium each year, yet only produces 4.5 million pounds. The U.S. has the world's largest fleet of nuclear power plants that produce 20 percent of our country's electricity, yet the U.S. produces today less than 10 percent of its own uranium and imports the balance.

Time and time again doubts have been voiced to me personally by the investment community as to whether any new licenses for uranium mining will ever be issued by the U.S. Federal Government. Investors need to know that a uranium project in the U.S. can obtain approval and proceed as long as the operator complies with all the relevant laws and regulations.

Finally, the legislation fails to include any type of valid existing rights language to protect preexisting property rights from being impaired by subsequently enhanced policy changes. By failing to

take into consideration property rights related to valid mining law claims established prior to enactment of the bill, the legislation will likely to generate claims for a taking under the takings clause of the constitution.

In conclusion, a stable regulatory environment is critical for development of our uranium resources or risk becoming even more reliant on foreign uranium. Increased import dependency causes a loss of job creation, alters the U.S. balance of payments, leads to unpredictable price fluctuations, and vulnerability with the possible supply disruptions due to political or military instability abroad. At a time when greenhouse gas emissions must be reduced and all available resources of energy must be utilized to meet increased demand, erecting barriers to the development of our uranium resources which, in turn, fuel the growth of domestic nuclear power is simply bad public policy.

I thank the Committee for this opportunity to comment on this proposed legislation.

[The prepared statement of Mr. Stover follows:]

Statement of Dennis Stover, Executive Vice President, Uranium One, Americas, on behalf of the National Mining Association

My name is Dennis Stover, Executive Vice President of Uranium One, Americas. I am testifying today on behalf of the National Mining Association (NMA). NMA appreciates the opportunity to testify before this committee to discuss the negative impacts of removing uranium from the auspices of the Mining Law and making it leasable under the Mineral Leasing Act (MLA).

NMA has vast expertise and is the principal representative of the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining companies.

Uranium One, Inc. is the seventh largest uranium mining company in the world and is Canadian based, listed on the Toronto stock exchange. I am responsible for our activities in the United States with offices in Edmond, Oklahoma; Casper, Wyoming; Corpus Christi, Texas, Denver Colorado; as well as Kanab and Moab, Utah. We are licensing three new ISR uranium mines, two in Wyoming and one in Texas. In addition, we are reactivating a wholly owned conventional uranium mill in Utah. We control uranium exploration and development properties in Arizona, Colorado, Nevada, Oregon, Utah, Wyoming and Texas. With the exception of Texas, much of these mineral rights are tied to federal lands. As a point of information, in August of this year, we paid about $1.4 million to the U.S. Bureau of Land Management (BLM) in maintenance fees for nearly 10,000 unpatented mining claims. The vast majority of these holdings are exploration properties that will require extensive exploration expenditures over several years to test and then confirm the presence of economic quantities of uranium. Once confirmation is achieved, only then will we begin the multi-year licensing and permitting process that leads to construction and operation of commercial mining facilities. All the while, claim maintenance fees will continue to flow to the BLM.

Making uranium leasable will not only negatively impact the domestic uranium mining industry, but also the economy and national security of the United States. I say this because the proposed change will put an end to growth of a viable domestic uranium mining industry, an industry that creates high-paying jobs with good benefits and provides resources critical to meeting our nation's goals of decreasing our reliance on foreign sources of energy and drastically reducing green house gas emissions.

Uranium is different from minerals under the Minerals Leasing Act (MLA)

A common argument in favor of leasing uranium under the MLA is that uranium is a fuel mineral and, therefore, should be governed like other fossil fuels such as coal, oil and gas under the MLA. This assumption ignores the fact that uranium is a metal. Its geology and geochemistry are totally different from that of the fossil fuels.

Unlike oil gas and coal, the discovery potential for uranium remains vast. As such, more exploration for uranium is required to find commercial developable deposits than for oil and gas and coal. Furthermore, uranium requires significant processing prior to having a marketable product. Oil and gas are much more readily marketable after being mined. For example, crude oil is sold in local and international markets, and the price of the product that comes out of the ground is generally readily ascertainable at the well. Gas is also often sold at the well head, in some cases without any processing. Upon initial extraction, uranium itself has no real economic value—considerable upfront investment and ongoing operating expense must be incurred to turn it into a marketable product.

Uranium is no different than other hardrock mining

In fact, uranium, as a metallic mineral, is much more akin to other hardrock minerals governed by the Mining Law than fossil fuels under the MLA. Extraction of uranium on federal lands is conducted similarly to extraction for other hardrock minerals governed by the Mining Law, involving advanced mining activities rather than traditional extraction techniques for fossil fuels such as oil and gas or coal. Oil and gas and coal are relatively plentiful, and occur over relatively large areas where found. Hardrock minerals are scarce and occur in small concentrations, and must be discovered by expending considerable money pursuing elusive prospecting clues. Once a prospect is identified, development commences at considerable cost, with the capital and labor intensiveness of large coal mines, but without the geologic or metallurgical certainty of coal mines nor the economic certainty and incentive of long-term coal sales contracts, which are not customary for most hardrock minerals. The combination of price volatility and the variations in the concentration and the chemical and geological characteristics of hardrock minerals, such as uranium, within an ore body can turn a profitable mine into valueless rock with a sudden downturn in the market.

It is for these reasons that the Mining Law provides an incentive for those who take substantial financial risk to develop a mineral deposit. To encourage mineral development, the Mining Law is uniquely self-executing in that a citizen may enter upon much of the public lands and explore for minerals. 30 U.S.C. § 22. Thus, the Mining Law allows the right of self initiation and those who explore for and discover a valid claim, obtain the right to develop that claim as long as they meet all applicable statutory and regulatory requirements. Since mining is a capital-intensive process that often takes years of development before minerals are produced, claimants need to have certainty that they will be able to bring a project to fruition.

The fact that the Department of Energy (DOE) currently administers a uranium leasing program on federal lands does not weigh in favor of a leasing system for all federal uranium. These leases address a relatively small area of withdrawn federal lands, containing 1.5 percent of proven domestic uranium reserves. The regulations governing this program are found at 10 C.F.R. Part 760. These regulations provide for competitive lease sales, royalty payments, environmental controls and performance requirements. Similar to oil and gas and coal under the MLA, the DOE leasing program involves known reserves discovered during the "massive" exploration drilling program undertaken by the U.S. Geological Survey and the Atomic Energy Commission during the 1950s.[1] Therefore, lessees have sufficient information about the potential rewards prior to bidding on the lease and committing to the expensive process of developing the uranium. Even so, when domestic annual uranium production peaked in 1980 at 43.7 million pounds, production from the DOE leased tracts (at 1.1 million pounds) represented about 2.5 percent of the total. (source: DOE/EA-1535, page 1-4)

H.R. 3534's leasing system will decrease U.S. exploration and development of uranium resources and increase reliance on foreign sources

By introducing great uncertainty regarding the lands ultimately available for uranium exploration and development, a leasing system will only serve to increase the United States' reliance on foreign sources of uranium. Under H.R. 3534, there is no guarantee that any uranium on federal lands will ever be leased as the decision to offer lands for leasing is completely in the Secretary of the Interior's discretion. Further uncertainty is created by the exploration license provisions of the legislation. An exploration license, even if the licensee discovers a commercial uranium deposit, confers no rights upon the licensee that discovers the claim. By failing to provide some type of preference right to mine the uranium to the discoverer and instituting a 12.5 percent royalty on new uranium production, the proposed system removes all

[1] See statement of David W. Geiser, Deputy Director for Legacy Management, U.S. Department of Energy, before the Senate Energy and Natural Resources Committee, March 12, 2008.

incentives for exploration for uranium on federal lands and will result in decreased domestic uranium production.

Leasing system not needed to address lack of royalty

Another oft-used argument for converting uranium to the MLA is that under the MLA, a royalty would be imposed for production on federal lands. However, a leasing system is not needed to address the lack of a fair return from uranium production from federal lands. For the last decade, the mining industry has fully supported the payment of a reasonable net proceeds type royalty from production on federal lands though amendments to the Mining Law.

Regulatory certainty is needed to encourage uranium development

The United States currently consumes about 56 million pounds of uranium each year, yet only produces 4.5 million pounds. The U.S. has the world's largest fleet of reactors (now 104), which operate at the world's highest average capacity factor and produce 20 percent of our country's electricity. In fact, America's nuclear reactors now produce more electricity than ever before. And the U.S. has one of the world's largest resource bases of uranium.

Despite the size of its nuclear fleet, however, the U.S. produces less than 10 percent of its own uranium and imports more than 90 percent of what we need to operate our reactors. The price for uranium has recently climbed to an historic high, and yet new U.S. production is still lagging, at least in part because of uncertainty over the regulatory environment for new production.

Uranium mining projects require a long lead time, are capital intensive and high risk. Thus, regulatory certainty is critical in obtaining the financing necessary to encourage the private sector to invest in uranium development on federal lands. Investors need to know that a uranium project in the United States can obtain approval and proceed unimpeded as long as the operator complies with all relevant laws and regulations. Due to their time- and capital-intensive nature, uranium projects require years of development before investors realize positive cash flows. Failure to provide certainty in the applicable legal regime will chill the climate for capital investments in uranium mining, to the detriment of this nation. Investments critical for bringing such projects to fruition will migrate toward projects planned in countries that offer predictable regulatory climates that correspond to the long-term nature of such operations. It is noteworthy that many of these foreign countries have regulatory regimes at least as prescriptive and stringent as those within the United States.

If the U.S. cannot offer a stable regulatory climate, we will become even more reliant on imports of foreign uranium to meet our growing domestic energy demands. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, and vulnerability to possible supply disruptions due to political or military instability.

H.R. 3534 fails to protect valid existing rights and constitutes a violation of the takings clause

H.R. 3534 does not contain provisions to protect existing uranium mining claims that were located under the Mining Law. While the bill does require the secretary to issue a lease for uranium claims that can show a valid discovery as of the date of enactment, it extinguishes the claim (and the claimants' rights under the Mining Law) by converting it to a lease. The legislation fails to include some type of valid existing rights (VER) language to protect pre-existing property rights from being impaired by subsequently enacted policy changes. VER clauses are commonplace in federal land-use statutes. Over the past century, Congress and the executive branch have used the same or a substantively similar phrase in more than 100 statutes and proclamations to preserve the status quo ante by protecting property interests that otherwise would be adversely affected by subsequently enacted federal laws. By failing to take into consideration property rights relating to properly maintained claims established prior to enactment of the bill, the legislation will likely generate claims for a compensable taking under the Takings Clause of the Constitution.

More than 100 years of legal precedent clearly indicates that a mining claim supported by a discovery is a property interest.[2] The courts have recognized that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes, which entitle claim holders to extract and sell minerals without paying any royalties to the government. For more than 135 years, this law has not re-

[2] See e.g., Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963) and Union Oil Co. v. Smith, 249 U.S. 337, 348-349 (1919)

quired the owner of a valid unpatented mining claim to pay any royalty to the United States for the right to possess and use the land for mining purposes or to extract and sell minerals therefrom. Thus, extinguishing the mining claims for valid existing uranium claims and subjecting existing claims to a royalty of 6.25 percent on the value of the uranium produced under the lease constitutes a Fifth Amendment taking without payment of just compensation by allocating to the government a cost-free share of production and extinguishing the claimant's unencumbered, exclusive property right to possess and enjoy its mining claims.

Conclusion

At a time when energy costs are rising and all available sources of energy must be utilized to meet increased demand, erecting barriers to the development of resources to provide such energy is simply bad public policy.

Response to questions submitted for the record by Dr. Dennis E. Stover, Executive Vice President, Uranium One, Americas, on behalf of the National Mining Association

Question from the Majority:

1. Mr. Stover, please provide detailed information, including the rate, the type, and the amount, on any royalties that Uranium One or its subsidiaries pays to mine uranium from any properties in the United States.

Response: At present, Uranium One has no uranium production in the United States, therefore we currently have no royalty payment obligations.

However, Uranium One is in the process of acquiring the Irigaray-Christensen Ranch ISR facilities and uranium mineral rights in Wyoming with the intent of initiating commercial production in 2011. In addition, Uranium One is presently licensing three new ISR projects in the US, two in Wyoming (Moore Ranch and Jab-Antelope) and one in Texas (La Palangana).

At Irigaray-Christensen Ranch, mineral rights associated with these properties are held by a combination of private and state leases along with federal unpatented mining claims. Production royalties from all State of Wyoming leases are 5% of gross realized value. The private leases contain uranium production royalties of 3% of the proceeds of the sale of the uranium.

At Moore Ranch, mineral ownership is a combination of private leases and unpatented federal mining claims with private leases containing uranium production royalties ranging from 2% to 6.5% depending on the price per pound of yellowcake sold and State of Wyoming leases which are 5% of gross realized value.

At Jab-Antelope, mineral ownership is a combination of State of Wyoming leases and unpatented federal mining claims. Here again the State of Wyoming leases have a 5% of gross realized value royalty.

Please note that all uranium production in Wyoming, independent of mineral ownership, is subject to a state mineral severance tax which currently is 4% of the selling price, subject to certain production cost related deductions.

At La Palangana, all mineral rights are secured with leases from ranches or individuals. Associated production royalties are tied to the selling price in a graduated schedule based on the price per pound of uranium sold. The production royalty schedules range from 7% up to 10% based upon the yellowcake selling price. Texas currently has no state mineral severance tax.

Please see the attached table entitled State Lease Royalty Rate Review for more details on state lease royalty provisions. I have compiled this brief description of the royalty schedules as examples of most of the uranium producing states including Arizona, Colorado, New Mexico, South Dakota, Utah and Wyoming.

It is important to understand the four projects mentioned above were deemed commercially viable based on economic analyses which included the reported royalty rates using long term price forecasts that are substantially above the current uranium spot market price. Uranium mining like base metal mining requires substantial processing to create a marketable product in the form of dried natural uranium concentrate. Processing requires not only substantial operating (ongoing cash costs) expenditures but also large front end commitments of capital which must be recovered from the resulting revenue stream.

Furthermore, the lack of a federal royalty is not a persuasive reason to convert uranium to mineral leased under the Minerals Leasing Act. For the last decade, the mining industry has fully supported the payment of a reasonable net proceeds type royalty from production on federal lands though amendments to the Mining Law.

Questions from the Minority:

1. **Dr. Stover, proponents of this legislation and certain testimony submitted today have made the assertion that moving uranium to a leasing regime under the Mineral Leasing Act (MLA) will better protect the environment. Can you please explain for this panel what regulatory framework currently oversees uranium mining to ensure environmentally sound production occurs?**

Response: I would like to respond in two parts. Uranium mining involves both exploration and production, each of which is highly regulated under a series of Federal and State environmental rules. As a general rule, companies that engage in hardrock mining and related activities on the public lands are subject to a comprehensive framework of federal and State environmental, ecological, and reclamation laws and regulations to ensure that operations are fully protective of public health and safety, the environment. The National Academy of Sciences (NAS) reviewed this regulatory framework for hardrock mining and concluded that the existing laws were "generally effective" in ensuring environmental protection. [Hardrock Mining on Federal Lands, National Academy of Sciences, National Academy Press, 1999, p. 89.]

A. Regarding exploration drilling activities on federal mineral properties, applications are submitted to the U.S. Bureau of Land Management (BLM) or U.S. Forest Service (USFS) depending on which agency manages the surface and to an appropriate state agency (for example, the Arizona Department of Water Resources (ADWR) or the Wyoming Department of Environmental Quality (WDEQ)). With respect to the federal agencies, a Plan of Operations or Notice of Intent application is submitted. A Notice of Intent to Drill and Abandon an Exploration/Specialty Well is submitted to ADWR or the WDEQ.

The federal agencies are required to adhere to the General Mining Law of 1872 (and its revisions and amendments), National Environmental Policy Act (NEPA), and Federal Land Policy Management Act (FLPMA), which also address procedures in cooperating with state and Native American agencies. FLPMA amends the Mining Law to ensure protection of the federal lands from impacts of hard-rock mining and related activities.

Following are further details of the various reviews undertaken and satisfied in the approval process:

1. A full review of the impact of the proposed exploration program's potential impact upon Threatened or Endangered species [as specified by the Endangered Species Act] is carried out by the U.S. Fish and Wildlife Service. Potential impacts upon plant species are also assessed by the U.S. Fish and Wildlife Service.
2. U.S. Forest Service biologists assess the possible impacts of the proposed exploration program upon U.S. Forest Service designated "sensitive species".
3. Biologists study habitat for various plant species in the proposed exploration areas.
4. Floodplains, wetlands and municipal watershed surveys are conducted in the project areas.
5. Cultural resources surveys, in compliance with the National Historic Preservation Act, are conducted, and heritage clearances for the project must be obtained.
6. A drill hole/well design plan that includes reclamation procedures is reviewed by ADWR and a registration number must be obtained.
7. The application must include mitigation procedures for all aspects of the operations including reclamation at the close of the project.
8. A reclamation bond must be posted with the appropriate agency by the exploration company which will assure full reclamation in the event the company does not perform reclamation.

In addition to the above processes relating to field operations, the following public notification and involvement procedures must be satisfied:

1. The authorizing agency (BLM or USFS) must hold government-to-government consultation with Native American Tribes.
2. For Plans of Operations, a public notice must be published in local newspapers with a description of the project with instructions on how to submit comments.
3. Follow-up meetings are held with Native American Tribes as necessary.

4. For Arizona and the Grand Canyon area, other agencies and organizations that are contacted as required by the particular authorizing agency include:
   a. Arizona Game and Fish Department
   b. Center for Biological Diversity
   c. County Board of Supervisors
   d. Williams-Grand Canyon News
   e. Grand Canyon National Park
   f. Wildlands Council
   g. KSGC Radio
   h. Arizona Department of Water Resources
   i. Forest Guardians
   j. Private property owners in area

The above procedures also take into account requirements outlined in the Clean Air and Clean Water Acts.

B. In the event exploration activities result in the discovery of a mine, permitting for a mine would require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) at the federal level and a number of regulatory reviews at the state level including but not limited to the Arizona Department of Environmental Quality (ADEQ) and Arizona State Mine Inspector. Similarly, permitting of a mine in Wyoming would require the same federal level actions and would include the Wyoming Department of Environmental Quality as the lead state agency. Further, any processing facility for the extraction of uranium from the ore would be subject to licensing by the U.S. Nuclear Regulatory Agency.

2. What incentives does H.R. 3534 provide for uranium exploration in the United States?

Response: Unfortunately, H.R. 3534 removes existing incentives that encourage exploration for uranium. Currently, uranium mining on federal lands is conducted pursuant to the General Mining Law of 1872. H.R. 3534 would remove uranium mining from the operation of the Mining Law and make uranium a leasable mineral under the Mineral Leasing Act and thereby remove the existing incentives for uranium exploration. The Mining Law encourages mineral development by allowing entry of most public lands for mineral exploration. 30 U.S.C. § 22. Those who discover a valid claim obtain the right to develop that claim as long as they meet all applicable statutory and regulatory requirements. By introducing great uncertainty regarding the lands ultimately available for uranium exploration and development, the leasing system in H.R. 3534 removes the incentive for exploration, makes uranium projects less attractive for capital investment and will serve to increase the United States' reliance on foreign sources of uranium.

The present form of the proposed leasing program will not encourage exploration for uranium minerals on federal lands. There are no incentives to explore and no preferential leasing rights for the company that make an economic discovery.

- A key provision of this bill is the imposition of a flat 12.5 % gross royalty on any production from the new uranium leases. Production royalties at this level are so high as to render essentially all of the domestic uranium resources uneconomic. By comparison, flat royalties on private and state mineral rights typically are in the range of 3 to 5 %. Double digit royalties are negotiated in rare or unusual circumstances but generally are at the top end of a graduated royalty scale. For example, one might see a sliding scale royalty schedule that ranges from 4 % - 5 at current market conditions to 10 or 12 % at triple digit sales prices.
- The bill requires individuals and firms who desire to explore for uranium deposits on the Public Domain to obtain an exploration license from the Interior Department before undertaking any exploration activities. The provision requires the licensee to provide copies of all exploration data collected (and paid for by the licensee) to the Interior Department, yet the incense does not obtain any preferential rights to lease the lands he previously has explored. Hence, an exploration company has no assurance that its propriety information documenting the discovery will remain confidential or that it can retain lands upon which it has made a valid discovery.

The proposed lease with a primary term of 10 years and a provision that the lease could then be held only if uranium "is produced under the lease in paying quantities" is another barrier to exploration.

- The typical lead time from discovery of payable quantities of a mineral to commercial production exceeds the 10 year primary term. Unlike coal, oil and natural gas that are typically located in vast sedimentary basins, uranium deposits

are small and difficult to locate, just like other hardrock deposits of gold, copper, molybdenum, cobalt, or copper. Just because a uranium deposit has been discovered, does not mean that it is economical to mine because of ore grade, depth, metallurgical problems and additional geological or environmental constraints. Discovery and confirmation of a potential economic deposit typically requires several years of intense drilling and metallurgical testing. Once this confirmation is achieved, only then will the multi-year licensing and permitting process begin which ultimately leads to construction and operation of a commercial mine. Completion of all stages of exploration, confirmation, delineation, and commercial development can require far more than the 10 years assigned to the primary term. Without assurance of extended lease terms, exploration is not likely to begin.

Another barrier to exploration is the geophysical reality that uranium is a metal that co-exists with other economic metals. The legal constraints of simultaneous exploration and exploitation of a leasable mineral in conjunction with locatable minerals presents a difficult, if not impossible hurtle.

- Uranium is a metal and in some of the world's largest deposits such as Olympic Dam in Australia, it is mined along with copper and gold. In the breccias pipes of northern Arizona as well as the Colorado Plateau region of Colorado and Utah, uranium commonly occurs with copper, nickel, cobalt, molybdenum, vanadium, and a number of other locatable minerals. To make one of these minerals leasable while allowing the others that would be mined simultaneously to be locatable would produce regulatory, legal, and accounting confusion at the very least.

The CHAIRMAN. Thank you. Mr. Morris.

STATEMENT OF DOUG MORRIS, GROUP DIRECTOR, UPSTREAM & INDUSTRY OPERATIONS, AMERICAN PETROLEUM INSTITUTE

Mr. MORRIS. Mr. Chairman, I am Doug Morris, Group Director for Upstream & Industry Operations for the American Petroleum Institute which represents nearly 400 companies involved in all aspects of the oil and natural gas industry. We welcome this opportunity to present industry's views on The Consolidated Land, Energy, and Aquatic Resources Act of 2009.

Securing America's energy future will require the development of all forms of energy, plus greater focus on energy efficiency and conservation. Alternative energy sources, which our members have made major investments, will grow in importance. However, oil and gas is the life blood of the nation's economy and will continue to be vital to our energy security for decades to come. These resources keep our transportation systems running, heat and cool or our homes, and are the basic components of thousands of consumer products that are used daily.

Oil and gas production from Federal lands plays a key role in supplying our nation's energy. These areas account for almost 25 percent of our domestic production, provide thousands of jobs for Americans, and are a major source of revenue for the government. For decades Federal policy prevented the development of hydrocarbon reserves located under most of OCS. Now for the first time in many years the Secretary of the Interior has the opportunity to open up these areas to exploration and production, and he should do so by moving quickly on the draft proposed five-year leasing plan.

Earlier drafts of this bill would have clearly hampered the development of oil and gas on Federal lands. We thank the Chairman

for deleting many of these onerous provisions. However, we do have concerns with this legislation.

First, it does nothing to encourage the development of oil and gas resources. In fact, it creates additional layers of bureaucracy which could in fact slow down leasing. For example, it has the potential to interfere with the OCS five-year leasing plan process that has worked well for 30 years. This process includes three separate public comment periods, two separate draft proposals, and the development of an EIS, and even after the Secretary approves the final program, there is a lengthy public comment period for each lease sale that includes consultation with stakeholders at various stages, and also a second EIS.

This process ensures that the Secretary receives extensive public comment and is able to give full consideration to all the economic, social and environmental issues in developing the program. Unfortunately, this legislation creates new regional planning councils, a new independent tier of decisionmakers which appears to mirror many of the activities that are currently being performed in a current leasing process. Furthermore, these councils have the potential to interfere with OCS development since leasing cannot occur if regional plans do not identify an area as being suitable for oil and gas leasing. By vesting this authority within regional councils the bill could essentially place areas under moratorium for years to come.

The bill would also eliminate the Royalty In Kind Program and use of categorical exclusions. These programs simplify payment to the Federal government, limiting a range of tough regulatory compliance issues, and eliminate unnecessary and redundant environmental studies. Problems with the management of either of these programs, whether perceived or actual, can and should be addressed by the Interior Department. Elimination of these programs have the potential—the programs have the potential to increase inefficiency is both unnecessary and unwise.

Finally, provisions such as requiring the promulgation of benchmarks for the development of each lease and the addition of a production incentive fee could increase the burden on lessees and the Interior Department with little or no positive impact on the development of Federal leases.

In summary, we believe that it is important to develop policies that provide more access to Federal lands and remove barriers that delay the development of these resources. We should not be erecting additional obstacles which, unfortunately, would be the unintended consequences of this legislation.

Delays in oil and gas developments do have a direct impact on our economy. An initial study on the impact of a two-year delay in developing unconventional natural gas resources shows that about 5.7 tcf would not be produced on Federal lands over the next 30 years. This 18 percent drop in production would amount to $37 billion loss to the economy.

We look forward to working with you on the continued development of an access policy that meets the energy needs of a nation. Thank you.

[The prepared statement of Mr. Morris follows:]

Statement of Doug Morris, Group Director, Upstream and Industry Operations. American Petroleum Institute

Mr. Chairman, I am Doug Morris, Group Director for Upstream and Industry Operations for the American Petroleum Institute, which represents nearly 400 companies involved in all aspects of the oil and natural gas industry. We welcome this opportunity to present the industry's views on the Consolidated Land, Energy and Aquatic Resources Act of 2009.

Securing America's energy future will require the development of all forms of energy—plus greater focus on energy efficiency. Alternative energy sources, in which our members have made major investments, will grow in importance. However, oil and gas are the lifeblood of the nation's economy and will continue to be vital to our energy security for decades to come. Oil and gas keep our transportation systems running, heat and cool our homes, and are the basic components of thousands of consumer products used daily.

Oil and natural gas production from federal lands plays a key role in supplying our nation's energy. These areas account for almost 25% of our domestic oil and natural gas production, provide thousands of jobs for Americans, and are a major source of revenue for the government.

For decades, federal policy prevented the development of the hydrocarbon reserves located beneath most of the OCS. Now, for the first time in many years, the Secretary of the Interior has the opportunity to open these areas to exploration and production—and he should do so by moving forward in a timely manner with the draft proposed Five-Year Leasing Plan. New lease sales in the Atlantic, Pacific, and Eastern Gulf of Mexico will help meet our future energy needs, support our future growing economy, and create thousands of well-paying jobs.

Earlier drafts of this bill would have seriously hampered development of oil and natural gas on federal lands. We thank the Chairman for eliminating many of these onerous provisions. However, we do have concerns with this legislation.

First, this legislation does nothing to encourage development of oil and gas resources. In fact, it creates additional layers of bureaucracy that could, in fact, slow down leasing.

For example, it has the potential to interfere with the OCS Five year Leasing Plan process that has worked well for 30 years. This process includes three separate public comment periods, two separate draft proposals, development of an environmental impact statement, and the final proposal.

And, even after the Secretary approves a final program, there is a lengthy public comment period for each lease sale that includes consultation with stakeholders at several stages and additional environmental analysis.

This process ensures that the Secretary receives extensive public input enabling a full consideration of all economic, social, and environmental values and encourages approval of Five-Year Programs that contribute to the nation's energy security.

Unfortunately, this legislation creates new regional planning councils—a new independent tier of decision makers—which appears to duplicate many of the activities that are currently being performed in the 5 year Plan Leasing Process. Furthermore, these councils have the potential to interfere with OCS development since leasing cannot occur if regional plans do not identify an area as being suitable for oil and gas leasing. By vesting this authority within regional councils, the bill could very well put areas effectively under moratoria for years to come.

The bill would also eliminate the Royalty in Kind (RIK) program and the use of categorical exclusions. The RIK program was intended to simplify payments to the federal government. It has the potential to eliminate a range of thorny regulatory and compliance issues. The use of categorical exclusions is designed to eliminate unnecessary and redundant environmental studies.

Problems with the management of either of these programs, whether perceived or actual, can and should be addressed by the Interior department. We believe that Secretary Kempthorne resolved many of them and that Secretary Salazar will continue the process. Elimination of programs that have so much potential to increase efficiency is both unnecessary and unwise.

And finally, provisions such as requiring the promulgation of benchmarks for the development of each lease and the addition of a "production incentive fee" could increase the burden on lessees and the Interior department with little or no positive impact on the development of federal leases.

In summary, we believe that it is important to develop policies that provide more access to federal lands and remove barriers that delay the development of these resources. We should not be erecting additional obstacles to development, which, unfortunately, would be the unintended consequence of this legislation.

Delays in oil and gas developments do have a direct impact on our economy. A preliminary study on the impact of a two year delay in developing unconventional natural gas resources shows that about 5.8 Tcf would not be produced from federal lands over the next 30 years. This 18% drop in production would amount to a $37 billion loss to the economy.

We look forward to working with you on the continued development of a pro-access policy that best meets the energy needs of our nation.

Response to questions submitted for the record by Doug Morris, American Petroleum Institute

Questions from the Majority:

1. **Mr. Morris, in your testimony you cite a study that finds that a 2-year delay in developing unconventional natural gas resources could result in a $37 billion loss to the economy. That study, performed by Advanced Resources International, Inc., was purportedly an assessment of the impacts of the CLEAR Act. However, the authors of that study do not analyze any part of the CLEAR Act itself—they simply assume that "a more complicated onshore federal leasing process" would result in two-year or four-year delays. Testimony from the DOI Inspector General and the Government Accountability Office, however, indicates that higher rental rates, production incentive fees, and diligent development requirements could act as inducements for faster production. Leaving aside API's position on those provisions, which was made clear in testimony and comments provided to the committee, could you provide any evidence that the provisions of the CLEAR Act that affect the onshore federal leasing process would actually slow down that process?**

RESPONSE: The elimination of the use of categorical exclusions in Section 308 of CLEAR will delay by years the development of a large number of leases that currently utilize this streamlining process. Furthermore, elimination of this option can even introduce delays in the development of leases that do not utilize the categorical exclusion process. This is because BLM resources (staff and funding) will be stretched even further to meet the agency's responsibilities, fulfill statutory mandates to complete NEPA reviews of projects and regional planning documents, and to issue permits required for exploration and production operations.

API also believes that many of the proposals contained in H.R.3534 will increase the cost of the permitting process or the cost of holding federal leases, and add administrative burdens to federal lessees. Thus, in addition to "slowing down" the federal leasing process, certain measures in this bill may discourage acquiring and operating leases on federal lands in favor of private lands, by affecting the economics of operating federal leases at the project level.

The increase in costs and fees for onshore leases found in Section 304 of the bill may appear modest, if considered on the scale of a single lease in the context of energy commodity prices and quarterly earnings reports in recent years. The Committee should understand that more than 80 percent of the exploratory wells drilled on public lands in the American West are drilled by independent companies, many of them small enterprises with narrow profit margins. Drilling and associated exploration costs remain high, and in the case of frontier exploration wells that many of these energy-finding independents drill, are wholly at risk when these expenditures are committed by the companies. An increase in the costs to hold federal leases, aggregated over the lease holdings of some of these companies, may be incremental, but it may also affect the decisions of some of these companies at the margin, leading to diminished interest in federal leases, or to fewer exploratory wells drilled.

The notice requirements set forth in Section 303 are unnecessary. API's concern is that adding a new statutory notice requirement to the requirements BLM must now observe is likely to benefit parties who are motivated to oppose any drilling activity. Extending BLM's regulatory notice requirements is likely to provide a seedbed for litigation that will add cost to BLM's budget, and cause delay and disincentives for future development of federal leases.

Section 306 requiring the use of best management practices (BMPs) could also delay the development of leases. Existing regulatory guidance, under which BLM operates, already calls for the use of best management practices for exploration and production operations on federal leases. Best management practices should be determined at the BLM field office level, by the petroleum engineers, wildlife biologists, reclamation scientists, and other land use management professionals working with

operators who understand the land in their area. Flexibility and adaptation to the operations and environmental contexts of particular projects are keys to the success of this program, and to its utility both as a marker for proposed and future projects, as well as a touchstone for BLM lease administration and land management. API's concern is that blunt statutory direction that best management practices will be used will diminish this flexibility and the adaptive management practices that flexibility encourages and fosters, and will drive this valuable program toward outcomes of basic compliance rather than innovative solutions.

API is also concerned that the "Diligent Development" and reporting requirements found in Section 301 and Section 302 of the bill will add to the paperwork burdens of operators, and to the document review burdens of BLM staff, and will lead to no new production. Federal leases grant federal lessees the right, and impose the obligation, to explore, develop and produce commercial quantities of hydrocarbons. A federal lease terminates if the lessee is not performing diligent drilling operations on or for the benefit of the lease during the primary term. It takes several years for a lease operator to analyze the underlying geology, perform the necessary technology and engineering assessments, and arrange the logistics of an exploration or development project on federal lands before a company can determine if a lease contains commercial quantities of oil and natural gas. The reality is that because a company's investment to acquire, assess and maintain the lease is lost if the lease is returned to the government at the end of its primary term, a significant incentive exists for companies to expeditiously develop these leases if sufficient oil and natural gas is found

In our view, the 2-year delay in developing unconventional natural gas resources that is assumed in the ARI study is a very realistic scenario. Based upon each of the provisions discussed above, it is likely that there will be delays in developing these resources and a 2-year delay is an entirely reasonable assumption given these provisions. The $37 billion loss to the economy that is attributable to a 2-year delay should thus be seriously considered.

2. Mr. Morris, please provide API's data on total U.S. petroleum imports (crude & products), total imports as a percentage of total domestic petroleum deliveries, U.S. crude oil production, total petroleum products delivered to the domestic market, and average active rotary drilling rigs in the United States, for each month from January 2000 through September 2009.

RESPONSE: In response to your request, please find API data (attached at the end of these responses) on total U.S. petroleum imports (crude & products), total imports as a percentage of total domestic petroleum deliveries, U.S. crude oil production, total petroleum products delivered to the domestic market, and average active rotary drilling rigs in the United States, for each month from January 2000 through September 2009.

3. Mr. Morris, the American Petroleum Institute recently released a report showing that the U.S. oil and natural gas industry supports more than 9 million jobs. This figure combines jobs due to domestic production, i.e., oil and gas exploration, development and extraction, with those that would exist regardless of the source of the production (such as gasoline stations and fuel dealers). Please provide the percentage of those 9 million jobs that are strictly attributable to domestic oil and natural gas production.

RESPONSE: The recent report that you refer to, prepared by PriceWaterhouse Coopers, found, as you state, that the U.S. oil and gas industry supports more than 9 million jobs nationwide. As your question implies, this is far more than the numbers of jobs we observe directly involved in the extraction of oil and gas. As shown in the following table, the direct impact of the upstream sector accounts for 7% of the total jobs impact.

	Jobs
Direct Impact of Oil and Natural Gas Industry	2,123,291
Upstream	662,109
Oil, Gas and NGL Extraction	368,451
Drilling Oil and Gas Wells	87,996
Support Activity for Oil and Gas Operations	205,662
Downstream	1,461,182
Indirect and Induced Impact on Other Industries	7,114,090
Operational Impact	5,695,146
Agriculture	104,549
Mining	9,268
Utilities	22,523
Construction	207,528
Manufacturing	397,299
Trade	892,854
Transport & Warehousing	206,629
Information	124,081
Finance, Insurance, Real Estate	708,422
Services	2,834,634
Other	187,359
Capital Investment Impact	1,418,944
Agriculture	17,993
Mining	1,630
Utilities	3,749
Construction	13,395
Manufacturing	283,535
Trade	281,908
Transport & Warehousing	69,863
Information	41,778
Finance, Insurance, Real Estate	120,482
Services	564,840
Other	19,771
TOTAL IMPACT	9,237,381
Upstream shareof total Impact	7.17%

4. Mr. Morris, on August 21st a drill rig in the Timor Sea northwest of Australia suffered a blowout while drilling a well, starting an uncontrolled release of oil that has continued at least through September 23rd. The blowout is believed to have released anywhere from half a million gallons to four million gallons of oil into the ocean—resulting in an oil slick that stretches extends over roughly 7,500 square miles. During testimony earlier this year, the committee was assured by executives of oil and gas companies that the chances of such a blowout happening with modern drilling technology is exceedingly small, and that there have been no

major blowouts in the United States since 1969. However, the safety record for drilling operations offshore Australia was almost as impressive, with no blowouts since 1984—until this year. The fact remains that even one such blowout, whether due to human error, equipment failure, or other unforeseeable event, could be absolutely catastrophic to the economy and ecosystems of coastal communities in the United States. What are the differences in technology used in drilling wells offshore the United States versus offshore Australia that would make it impossible to experience a similar blowout (or any other type of blowout) off our own shores?

RESPONSE: The policies followed by our member companies and MMS regulations ensure that wells on the U.S. OCS are cased, cemented, protected with internal plugs, and monitored to prevent this type of occurrence. Details of what actually occurred have not been released, but based on reports we have read, the main issues appear to be a questionable well plan and casing program, poor cementing procedures, the apparent absence of barriers in the suspended wells, and the inability to monitor casing pressure (mudline suspensions). We believe that this type of accident would not occur in U.S. waters for the following reasons:

1. MMS would not have approved the casing program as we understand it.
2. MMS would have required a second barrier (in addition to the cement at the casing shoe) in the suspended wells.
3. MMS would have required a means of monitoring casing pressure.
4. It is not apparent that they pressure-tested the 9 5/8 casing to 70% of the Minimum Internal Yield as is required by MMS.

Furthermore, the Australian regime is complicated by the split jurisdiction between State and Federal agencies. In this case, the Northern Territories were responsible for well planning and integrity while the Commonwealth regulator (NOPSA) was responsible for surface facilities. We believe that the MMS would have been able to respond in a more timely manner to the incident.

Note that over the past 30 years, an average of only approximately 6300 bbl/yr of oil has been spilled in U.S. Federal waters from all 4000 production facilities. During this period of time almost 30,000 wells have been drilled. Natural seeps have accounted for the discharge of more than 1,200,000 bbl of oil into U.S. OCS waters every year.

Questions from the Minority:

1. H.R. 3534 supports an assumption that categorical exclusions are utilized by land management agencies to allow for the circumvention of NEPA requirements by oil and gas producers. How would you respond to this assertion?

RESPONSE: API disagrees with the statement that "categorical exclusions are utilized by land management agencies to allow for the circumvention of NEPA requirements by oil and gas producers".

Section 390 of the Energy Policy Act of 2005 (EPAct) allows federal agencies to categorically exclude oil or gas drilling from environmental review and public input under the NEPA under certain circumstances. In reviewing an Application for Permit to Drill (APD), Surface Use Plan of Operations, or pipeline application involving a proposed activity that fits into one of five categories identified in Section 390, applicability of a categorical exclusion is presumed. Put another way, there is a "rebuttable presumption" that no further NEPA analysis is required. The limited circumstances where categorical exclusions under Section 390 of EPAct may be used were designed to enable energy development where the environmental impact is minor, that make use of an existing operations footprint or are located in developed fields, or where drilling was already analyzed in a NEPA document as a reasonably foreseeable activity. Thus, the specific categorical exclusions created under EPAct do not circumvent NEPA, because they are limited to situations where further analysis is not necessary.

The ability to approve certain projects using categorical exclusions where justified provides BLM and other federal agencies the flexibility to direct the attentions of staff toward those projects for which greater time and effort for environmental review is warranted. The ability to use categorical exclusions can provide for more efficient pursuit of the agency's NEPA responsibilities. Thus, rather than rather than spending time in the office on redundant paperwork, agency staff can spend more time in the field inspecting and monitoring operations, where commitments and practices described on paper can be validated, and where on-the-ground environmental protection can be assured.

H.R. 3534 would, if enacted, completely do away with this tool that is authorized in the National Environmental Policy Act (NEPA), as well as in the regulations developed to implement NEPA found at 40 CFR parts 1500-1508. The bill seems to take the position that categorical exclusions are unusual or exceptional agency actions under NEPA, when they are expressly provided for under Sections 1500.4, 1500.5, 1507.3 and 1508.4 of CEQ's regulations when an activity can reasonably be shown not to have an effect, cumulatively or individually, on the human environment, or in situations when prior environmental and/or project review has occurred and additional environmental assessment is unnecessary.

The recent Government Accountability Office (GAO) study on Section 390 Categorical Exclusions [1] has been cited in support of the claim that categorical exclusions have been the subject of widespread abuse by BLM. In fact the report details mostly administrative errors, rather than egregious actions or violations of law, stating at one point: "...our findings reflect what appear to be honest mistakes stemming from confusion in implementing a new law with evolving guidance". GAO's report recommends that BLM can remedy these errors with improved guidance, implementation templates, and better oversight from the agency's offices. However, the GAO report also notes the fact that five BLM field offices that process APDs failed to approve a single categorical exclusion - Miles City, MT; Great Falls, MT; Rock Springs, WY; Newcastle, WY; and Roswell, NM—but fails to explore why this situation occurred. Given the guidance provided by NEPA and its implementing regulations, and the direction provided in Section 390 of EPAct, API believes it is equally important to investigate circumstances where categorical exclusions were not used as it is to examine when they might have been applied in error.

Properly used, categorical exclusions remain an appropriate and important tool in the NEPA toolbox for BLM, minimizing redundant analysis and paperwork and the demands these place on staff and agency resources. Categorical exclusions enable BLM to employ a balanced approach to managing the development of vital energy resources while still meeting its obligation to protect the environment.

The CHAIRMAN. Thank you. Mr. Zorn.

STATEMENT OF JAMES E. ZORN, EXECUTIVE ADMINISTRATOR, GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

Mr. ZORN. Mr. Chairman, Members of the Committee, the advantage of having a name that starts with Z right before lunch. It is an honor and a privilege to be here today on this constitution day to talk about how the other governments of this nation, the Indian Tribal governments, might fit in, how and why they should fit in under this bill and under this Committee's efforts.

My name is James Zorn. I am the Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission. I direct you to Attachment 1 of our statement to show the 11 tribal nations that have formed GLIFWC, as we call ourselves, our acronym, to help them secure their treaty rights to hunt, fish and gather in these areas of land with which they treated with the United States. The United States gained title to the land. In exchange for the bargain the United States guaranteed the tribes the right to continue to use that land to meet their subsistence, their economic, their spiritual, their cultural, and their medicinal needs consistent with their interrelationship with the natural world.

And it is from that perspective that when, whether it is a regional policy commission under this bill or in other context, when decisions are made that affect the tribes and their resources the tribes need to be at the table. Not only do they need a seat at the table, but they need the capacity to be able to get there. An empty

---

[1] United States Government Accountability Office, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development Under Section 390 of the Act, GAO-09-872, September 2009.

seat does the tribes no good. So the funding mechanisms in which the other governments participate in really need to be made available to the tribal governments as well.

What we have tried to do in our written testimony is to provide the story about our tribes and their rights in the Great Lakes context to help the Committee have a record to support these nice provisions that are in the bill, to enable and help tribal participation. We are sure there are other stories in other parts of the country that can be told and we encourage the Committee to talk to tribes throughout the country as well.

The whole notion of having tribes to participate really is the status quo. As this Committee knows, the policy of self-determination and self-governance of the United States toward tribes has been in place for many, many years. It is just the way of doing business. It is not a matter of one government trying to control another government. It is really a matter of getting the effective governments who have their respective authorities and responsibilities together to coordinate what they do to make sure that they can try to reach consensus to meet mutual goals.

The commission just celebrated our 25th anniversary this past summer, and we reflected on the history of the relationship of tribes and states and the Federal agencies in our particular context with respect to these treaty rights. Twenty-five years ago when the tribes first began to exercise their treaty rights to spear fish in northern Wisconsin they were met by protestors at the boat landings throwing rocks, spitting on women and children, planting pipe bombs at the boat landings.

We are happy to report that 25 years later the issue is not about who has the right to take what fish where, at what time of the year, and with what method. We have come together as governments, a communities to figure out how to keep fish there for everyone. And so as the Committee looks at this bill and how tribes might fit in that is the lesson that we would offer to the Committee; that when you get the people together it is not about how the communities are different, it is about how they are alike.

When Justice Sandra Day O'Connor asked one of the tribe's attorneys in a case that came before the Supreme Court involving these treaty rights, "So tell me, Mr. Sloan, why is it that the tribes cannot engage in their life ways under the state system of regulation and management here in the State of Minnesota," the answer was very simple, and it was very down to earth. "Your Honor, babies are not born during the state fishing season. People do not die during the state hunting season. There is a life-long cycle of events that the tribal communities rely upon these resources to help commemorate in their own way. They need these resources to do things that are consistent with the very purpose for which those treaties were entered into."

So there is a role that tribes need to play at the table, that there is no other government that is in the position to do that for them. It is only the tribes that can and should be there to do that for themselves.

It is a great honor and privilege to be here today to help the Committee think through of how tribes fit in, and I would be happy to answer any questions. Thank you very much.

[The prepared statement of Mr. Zorn follows:]

Statement of James E. Zorn, Executive Administrator for the Great Lakes Indian Fish and Wildlife Commission (GLIFWC)

Mr. Chairman and Members of the Committee, my name is James E. Zorn and I am the Executive Administrator for the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). On behalf of GLIFWC's eleven member tribes, thank you for the opportunity to appear before you today, September 17, 2009, to testify on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009.

I. GLIFWC's Membership and Purpose

GLIFWC is a natural resources management agency exercising delegated authority from its 11 member federally-recognized Ojibwe [1] tribes in Wisconsin, Michigan and Minnesota regarding their ceded territory (off-reservation) treaty rights. [2]

Each of its member tribes has entered into one or more treaties with the United States, under which the tribes reserved off-reservation hunting, fishing and gathering rights in the lands ceded to the United States. [3] These treaties represent a reservation of rights by each signatory Tribe individually and by all signatory Tribes collectively, as well as a guarantee of those rights by the United States.

Courts, including the United States Supreme Court in its 1999 Minnesota v. Mille Lacs ruling, consistently have recognized and upheld the treaty rights of GLIFWC's member tribes. [4]

The rights apply to public lands and waters located within the ceded territories, and include the right to harvest virtually all natural resources found there. The ceded territories include portions of Lake Superior, as well as parts of the Lake Superior and Michigan watersheds. With these treaties and treaty rights in mind, GLIFWC was established in 1984 pursuant to a Constitution developed and ratified by its member tribes. It is an intertribal organization within the meaning of the Indian Self-Determination and Educational Assistance Act (PL 93-638). Since its inception, GLIFWC has entered into a contract with the Bureau of Indian Affairs pursuant to the Act, with funding provided on a regular basis by Congress.

GLIFWC's ultimate responsibility is twofold: 1) to ensure that its tribes and their tribal members are able to meet their subsistence, economic, cultural, medicinal and religious needs through the exercise of their ceded territory natural resource harvest and management treaty rights; and2) to ensure a healthy, sustainable natural resource base in the ceded territories through cooperative management partnerships with other governments and agencies.

II. The Circle of the Seasons—Ojibwe Culture and Lifeways

GLIFWC's member tribes share a common origin, history, language, culture and treaties. They share a traditional and continuing reliance upon fish, wildlife and plants to meet religious, ceremonial, medicinal, subsistence and economic needs.

It is precisely to maintain this lifeway that the tribes reserved the rights to hunt, fish and gather in the ceded territories. In proper perspective, this reservation of sovereign rights is part of the Ojibwe's on-going struggle to preserve a culture—a way of life and a set of deeply held values—that is best understood in terms of the tribes' relationship to Aki (earth) and the circle of the seasons.

For the Ojibwe,

> Culture is not merely a way of doing things that all human beings living in a society do to survive, such as eat, build homes, and arrange their relationships with each other. Culture also must be understood as a system of beliefs and practices that organize these activities. For example the collection of wild rice, the spearing of sturgeon, and the hunting of deer are fun-

---

[1] The tribes also are referred to as Chippewa, or, in their own language, Anishinaabe.

[2] GLIFWC member tribes are: in Wisconsin—the Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, St. Croix Chippewa Indians of Wisconsin, Sokaogon Chippewa Community of the Mole Lake Band, and Red Cliff Band of Lake Superior Chippewa Indians; in Minnesota—Fond du Lac Chippewa Tribe, and Mille Lacs Band of Chippewa Indians; and in Michigan—Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians. See Attachment 1 for a map showing where these tribes and the treaty cession areas are located.

[3] See Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; Treaty of 1842, 7 Stat. 591; and Treaty of 1854, 10 Stat. 1109.

[4] See People v. Jondreau, 384 Mich 539, 185 N.W. 2d 375 (1971); State of Wisconsin v. Gurnoe, 53 Wis. 2d 390 (1972); Lac Courte Oreilles v. Voigt (LCO I), 700 F. 2d 341 (7th Cir. 1983), cert. denied 464 U.S. 805 (1983); U.S. v. Bresette, 761 F.Supp. 658 (D. Minn. 1991); Minnesota v. Mille Lacs Band, 199 S.Ct. 1187 (1999).

> damentally different activities for these Indian people in contrast to non-Indians. When Indians undertake these activities, the harvesting, processing, distribution, and consumption of natural foods, they are not only perpetuating their ancient cultures but the resources themselves. As Algonquian people take from the environment for their own use, they conceptualize their role as hunters, gatherers, and fishermen as part of the supernatural as well as the natural world. The manner of hunting, the ritual offering left to assuage the souls of collected plants, and the use of [wild] rice, venison, and sturgeon as integral components of ceremonial feasts are activities which themselves assure the perpetuation of these creatures as well as themselves.[5]

Thus, the Ojibwe are closely tied to the natural environment by a system of beliefs and practices that organize everyday life. This environmental human relationship involves a notion of geographic place that embodies the Ojibwe's human origin and historical identity, as well as the way the Ojibwe conceive their cultural reality in the modern world.[6]

III. Exercising Tribal Sovereignty to Preserve the Circle of the Seasons

In accordance with these types of traditions and teachings, the Ojibwe seek to preserve a balance between the human being and the natural resources that humans rely upon, as well as between the natural world order and the supernatural world order. They understand the need to match human needs with Aki's capability to produce and sustain, and the need to nourish the body as well as the spirit.

Thus, for the tribal governments involved, the exercise of retained sovereign authority to manage natural resources and to regulate tribal members in the exercise of treaty rights is a necessary element of Ojibwe cultural preservation. Simply stated, ecological sustainability equates to Ojibwe sustainability.

GLIFWC and its member tribes are committed to natural resource management programs that sustain Aki's bounty for present and future generations. They recognize that perpetuation, enhancement and restoration of the natural resources upon which they rely are essential to sustaining tribal sovereignty, culture and society.

The court decisions affirming the Ojibwe's treaty rights serve as a reminder that tribes and tribal governments have a legal status not only in their own right but also under the United States Constitution. In exercising their treaty rights to harvest and manage natural resources, the tribes carry out sovereign powers of self-government and undertake a wide array of activities that perpetuate their culture. This means that other governments, particularly states, cannot maintain exclusive control of natural resource use and management in the ceded territories.

IV. GLIFWC's Off-Reservation Natural Resource Management Program

Just as the tribes' relationship to Aki is all encompassing during the course of the seasons' circle, with the harvest of each resource at its proper time (e.g. maple sap and fish in spring, plants in summer, wild rice in fall) so too is GLIFWC's natural resource management program. It is part of its member tribes' comprehensive intertribal self-regulatory system of management plans and conservation codes that govern a broad range of treaty rights activities, including fishing, deer hunting, bear hunting, small game and furbearer hunting/trapping, wild rice gathering, and wild plant and forest products gathering.

GLIFWC's program is designed to secure the exercise of treaty rights to meet subsistence, economic, ceremonial, medicinal, and religious needs, as well as to protect and enhance the natural resources and habitats involved. The information, data and analysis resulting from GLIFWC's management and research activities can be used in adaptive management, and are available to and used by conservation agencies of other jurisdictions as they carry out their own natural resource management programs.

We do this work through our Biological Services Division, which conducts a variety of fish, wildlife and plant assessments, monitors tribal harvests, assists in tribal permit issuance and animal registration, and provides other management assistance. Particular areas of work include:

1. Harvest Management—Determine available harvestable surpluses and then monitor and prepare regular reports on tribal ceded territory harvest levels for

---

[5] Charles Cleland, et al., The Potential Cultural impact of the Development of the Crandon Mine on the Indian Communities of Northeastern Wisconsin 110 (1995).

[6] In addition to the court decisions themselves, other sources documenting the essential role that natural resources play in Ojibwe culture include: Fish in the Lakes, Wild Rice, and Game in Abundance (James M. McClurken et al. eds., (2000); and Ronald N. Satz, Wisconsin Academy of Sciences, Arts, and Letters, Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective (1991).

a wide range of species, including fish (such as walleyes, muskellunge, lake trout, and whitefish), wildlife (such as white-tailed deer, black bear, and furbearers), and plants (such as wild rice and other wild plants).

2. Population Studies, Assessments, and Research—Conduct a variety of population studies, assessments, and related research.
3. Habitat Enhancement and Exotic Species Control—With the goal of providing healthy, fully-functioning ecosystems that will provide for the sustainability of the natural resources they support.
4. Contaminant Studies/Human Health Research—Research projects and fish consumption advisories to help prevent contamination of natural resources and to help tribal members maximize the health benefits from a traditional diet.

GLIFWC recognizes that its responsibility for regulating and managing Great Lakes resources is one that it shares with local, state, federal and foreign governments. Because treaty rights extend to areas of shared jurisdiction and use, we along with these other governments are compelled, whether legally or practically, to acknowledge the rights and responsibilities that we each share. Thus, we undertake many cooperative research and management projects including:

1. Fish Population Assessment Activities—GLIFWC works with the Michigan, Minnesota and Wisconsin departments of natural resources to coordinate an agreed-upon assessment program for ceded territory waters, both for Lake Superior and inland. For Wisconsin, much of this work stems from the joint fishery assessment, begun in 1991, and undertaken by the USFWS, BIA, WDNR, tribes, and GLIFWC.[7] In May 2009, this joint effort received a Department of Interior "Partners in Conservation" award, recognizing those who make exceptional contributions in achieving conservation goals through collaboration and partnering. For Minnesota, the state and the tribes are undertaking a joint walleye population study on Mille Lacs Lake as part of the co-management responsibilities set forth in the Mille Lacs Band v. State of Minnesota case.
2. Upper Peninsula Coastal Wetland Project—This project is designed to protect and enhance nearly 3,000 acres of wetlands and associated uplands in the Lake Superior and St. Mary's River watersheds. Funds were provided to GLIFWC and its member tribes by the BIA through the tribal Circle of Flight initiative and to Ducks Unlimited by the North American Wetlands Conservation Fund grant. Partners include the tribes and GLIFWC, and the State of Michigan, USDA-Forest Service, Gogebic County (Michigan), Ducks Unlimited, and a number of other non-governmental conservation organizations.
3. Furbearer Research—GLIFWC's biologists have undertaken a multi-year study of fishers, pine martens, and bobcats in the Chequamegon-Nicolet National Forest. Aspects of this study include home range and habitat usage, species interaction, and developing a habitat suitability index model. The USDA-Forest and WDNR are cooperators and financial contributors to this research.
4. Lake Sturgeon Project—GLIFWC, the Bad River Tribe, and the USFWS have joined to gather data on the distribution and movement of juvenile sturgeon in and around the Bad River and its tributaries. This river has one of only four known sturgeon populations that spawn in Lake Superior tributaries.
5. Lake Superior Research Institute, UW-Superior—GLIFWC and the University of Wisconsin-Superior have entered into an agreement establishing the Environmental Health Laboratory within the University's Lake Superior Research Institute. This laboratory has undertaken a number of studies regarding the health effects for Indian people associated with consuming fish contaminated with toxics. It is a major partner in GLIFWC's mercury-in-fish project and tests most of the fish samples as part of that study.
6. Purple Loosestrife Invasive Species Project—GLIFWC has undertaken a long-term project to control and reduce purple loosestrife (an invasive non-native plant that supplants native species including wild rice) in the Bad River watershed. Among its cooperators on this project are the USDA-Natural Resource Conservation Service, local county highway departments, local town and municipal governments, the Nature Conservancy, local 4-H Clubs, and private landowners. One part of the project is to educate private landowners about loosestrife control and to provide eradication services at a landowner's request.

Achieving the goals of these projects benefits not only the eleven tribal communities that GLIFWC serves, but also the broader communities of northern Wisconsin, east central Minnesota and Michigan's Upper Peninsula. These partnerships: i) provide accurate information and data to counter social misconceptions about tribal treaty harvests and the status of ceded territory natural resources; ii)

[7] See Bureau of Indian Affairs, U.S. Dep't of the Interior, Casting Light Upon the Waters: A Joint Fishery Assessment of the Wisconsin Ceded Territories (1991).

maximize each partner's financial resources; iii) avoid duplication of effort and costs; iv) engender cooperation rather than competition; and v) undertake projects and achieve public benefits that no one partner could accomplish alone.

V. Consolidated Land, Energy, and Aquatic Resources Act, H.R. 3534

It is with this twenty-five years of history and experience in protecting and enhancing ceded territory resources, including portions of the Great Lakes and its watershed, that the Great Lakes Indian Fish and Wildlife Commission is before you today. As an initial matter, GLIFWC greatly appreciates the Committee's and Chairman Rahall's efforts to ensure that tribal governments and tribal treaty rights are acknowledged and protected as you consider the Consolidated Land, Energy, and Aquatic Resources Act, H.R. 3534 (CLEAR Act). GLIFWC was given an opportunity to comment on the draft legislation earlier in the spring. We are pleased that the CLEAR Act as introduced reflects some our comments. This is an important component of effective consultation and is an example of how tribes and the Federal Government can interact positively to achieve shared goals.

These comments are purely from the perspective of our member tribes' off reservation rights in the western Great Lakes region and, as such, GLIWFC would not purport to pass judgment on H.R. 3534's provisions with regard to the Outer Continental Shelf leasing process or the bill's proposed federal leasing or royalty reforms. Nevertheless, GLIFWC does support the inclusion of "affected Indian tribes" as defined in the bill, in any planning process that has the potential to lead to impacts on treaty and trust resources.

We are most heartened by the Act's specific inclusion of affected Indian tribes in Section 605—the Ocean Resources Conservation and Assistance Fund. We would ask that this language be amended to create a set-aside, perhaps of 5%, for affected Indian tribes. In our experience where there is no tribal set-aside for programs such as this, tribal natural resource programs are vulnerable to politics and the vagaries of the appropriations process. With a set-aside, tribes would be able to plan and execute in a way that complies with the bill's mandate for a five year plan.

We appreciate the Indian savings provision in Subtitle A of Title V. However, consultation with affected Indian tribes is still necessary and should be explicitly required under section 501(e) before the Secretary approves or issues leases for commercial solar or wind energy development on federal lands. Just as consultation with affected governors and other stakeholders is required, so too should tribal consultation be explicitly mandated. The western Great Lakes region is home to a number of national forests and parks—public lands that tribes rely on to provide the natural resources that maintain their lifeways. This region is also witnessing a significant interest in exploring the potential of wind in particular as a power source, and consultation with tribes will be vital in planning for any eventual development. We note that the state of Wisconsin has already committed to such consultation in its "Wind on the Water" analysis of potential wind development in Lakes Superior and Michigan.

While we appreciate the CLEAR Act's inclusion of tribes as eligible members of the Ocean, Coastal, and Great Lakes Council, we ask that a tribal representative on the Council be mandatory. Tribes rely on coastal resources not just for economic livelihood or recreational activities, but because they serve as the very essence and life blood of their communities and cultures. Thus, the interests and concerns of tribal governments with regard to how to use, protect, and preserve these resources is often complicated and not always consistent with that of States, the federal government, or other agencies and interests. Consequently, we cannot depend on these other agencies to adequately represent tribes in these forums and have found that the most effective way to ensure that tribal concerns are addressed is to ensure that tribes have a place at the table. Making a tribal representative mandatory would achieve this.

Finally, with regard Title IV and the Reauthorization of the Land and Water Conservation Fund, tribal governments have long advocated that Congress include a Tribal set-aside in this Program. In the past Tribes have advocated for a 2-5 percent set-aside for this program. We support these efforts to ensure that there is parity between tribal natural resource agencies and their State cohorts.

VI. Conclusion

Tribal natural resource management programs touch the very core of federal Indian law and policy—the preservation of historically and culturally significant activities of Indian people, the fulfillment of federal promises made to the tribes by treaty, the protection of significant Indian subsistence and economic activity, the enhancement of self-government by the tribes, and the encouragement of government-to-government dealings between tribes, the federal government, and other govern-

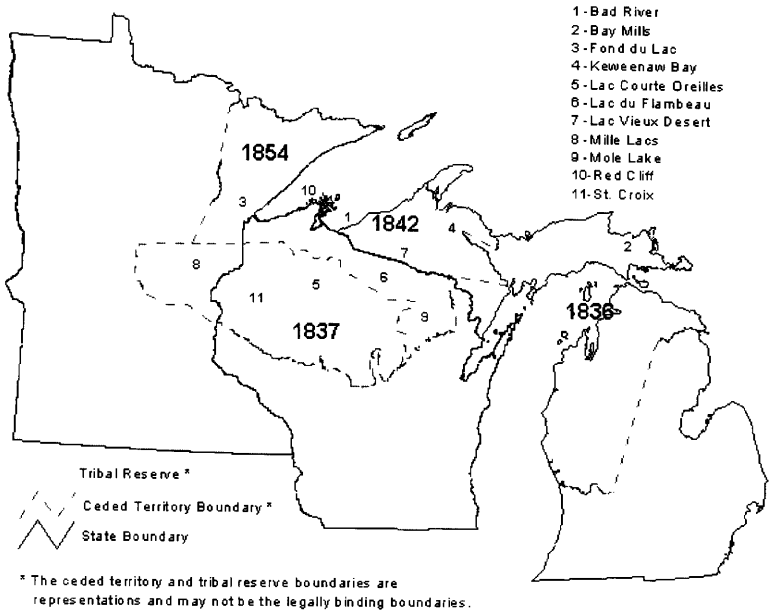
ments. Congress carries an important obligation to promote and support these programs upon which tribes rely to maintain their sovereignty, culture and society.

Thank you for the opportunity to testify.

ATTACHMENT 1

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

MEMBER TRIBES AND CEDED TERRITORIES



The CHAIRMAN. Thank you very much. Let me begin with Mr. Campbell.

The bill, as you know, requires sealed bids for onshore oil and gas leases rather than the current oral bidding process. From our perspective and, of course, that is why I put it in the bill, I think sealed bidding has the potential to enhance a return for the taxpayers. So, my question to you is I would ask you to elaborate on why you are opposed to sealed bidding. Is it because money might be left on the table?

Mr. CAMPBELL. Sir, what happens during an oral auction is you do a significant amount of analysis before the bidding. You go in, and I believe my experience has been, having formerly participated in sealed bids many years ago onshore, was that you get a fair representation at the table of those bidders who have done an analysis and can come up with what the value is or what they perceive the value to be for the property.

The CHAIRMAN. OK, let me ask you one further questions and it is not a matter that is addressed in the bill, but do you see any benefit in conducting lease sales via the Internet?

Mr. CAMPBELL. You know, they just started doing those and I am going to have to reserve my response until I see how successful they are. From a personal standpoint, I will tell you there is something to be said for sitting there looking at the guy across from you who is bidding against you.

The CHAIRMAN. Yes. OK, let me ask Mr. Mataczynski. You are critical of the competitive leasing process for renewable energy, saying it was once tried by BLM and it has not worked well. But in that process bidding started at $5,000 and the winning bid was over $225,000. So it appears that our public lands are being drastically undervalued right now. Oil, gas, geothermal, offshore, wind, all have competitive lease processes so it certainly can work. You claim there is little competitive interest in many Federal areas, but if that is the case it would appear the bids would not go very high.

How can you argue that a competitive process allows the market to find the proper value for those lands is not in the best interest of the American taxpayer?

Mr. MATACZYNSKI. Well, the first thing I will point out is that I think on the wind projects where the BLM did use a competitive process none of the projects were ever actually constructed, which does not then yield the benefit that everybody is looking for.

Relative to the current market conditions, the current lease rate that the BLM has used or is using for wind projects is approximately 5 percent, which is very close to the rate that would be received on private lands. An auction process may push that rate up. It may push that rate down. I think the more likely it would be is that it would push it down given the amount of time that it takes to develop on government lands.

Specifically, we do see this headed in the direction of an auction, but we think that the better effort in the near term would be to work on fixing the processes that would speed up the development of sites on government lands before institution the auction process.

The CHAIRMAN. Thank you. Mr. Zorn, let me ask you. Are the Great Lakes states able to unilaterally manage the Great Lakes without consulting and coordinating with your organization and/or your member tribes?

Mr. ZORN. No, sir, they are not. The situation, especially for tribal reservations, you know, the tribes have a significant amount of control over their internal affairs. So, as you look at the map of the Great Lakes, there are significant reservations there bordering on the Great Lakes and in the basin where clearly, if other governments want to try to accomplish something with the tribes, they are going to have to work with them.

In the off-reservation context where these treaty rights apply, as we just found out, for example, with the wind power issue in Wisconsin. The Wisconsin Public Service Commission was commissioned to look at if or how the wind power could be developed in the Great Lakes, and it was concluded that because of these treaty rights the states really needed to consult with the tribes. And so the state management authority exists, but it certainly is not un-

fettered, and there is that requirement that they need to integrate tribes into the process.

The CHAIRMAN. Does your organization have a written management agreement with any of the Great Lakes states or Canada——

Mr. ZORN. Oh, absolutely.

The CHAIRMAN.—management of the Great Lakes?

Mr. ZORN. Absolutely. There are tons of agreements. You have the strategic Great Lakes Joint Fishery Management Plan. You have under the auspices of the Great Lakes Water Quality Agreement between the United States and Canada, the Buy National Program to restore and protect Lake Superior. You have consent decrees between states, tribes, and the United States, and the treaty rights context in Michigan, and so on and so forth. There is a long list of them.

The CHAIRMAN. Recognize the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Mr. Chairman.

The CHAIRMAN. Or we will advise the members that we have just begun a series of at least 10 votes I am advised on the House Floor, so I hope we can wrap this up before breaking for the votes so the panel will not have to come back.

Mr. BISHOP. Could I request, Mr. Duncan has not had a chance to ask any questions today. Can he be the first one on this side to go?

The CHAIRMAN. Sure.

Mr. DUNCAN. Well, thank you, Mr. Bishop, and thank you, Mr. Chairman. Let me just get out four questions and since we may not have time to answer these questions I would appreciate it if you would submit comments for the record later unless you can make some brief comments now.

But I am concerned that we have unemployment of almost 10 percent, so we have many millions unemployed. Some people say we have an underemployment problem that is even worse with many college graduates working at very low paying jobs, and my first question will be: Will this bill drive up energy costs and make it more difficult for poor and lower income and working people to pay their utility bills and their other energy costs?

Second, will this bill give even greater advantages to foreign energy producers? Mr. Stover testified that we use or consume 56 million pounds of uranium each year in this country, that we only produce 4.5 million pounds. So I am a little bit concerned that this bill will really only help foreign energy producers who are already making a killing off us in the first place.

Third, I understand from staff that it takes an average right now of 10 years from the beginning of the leasing process to actual drilling. That is what I was told yesterday by staff. Will this bill speed up that process or delay it further? I am concerned that it may delay it further.

And fourthly, in every highly regulated industry it seems to end up in the hands of a few big giants because first the little guys go out, or they are forced to merge, then the medium-sized companies go out, or they are forced to merge, and I am wondering will this bill make it more or less difficult for small businesses to survive in the industries affected by this bill, and I am a little bit afraid that it is going to make it more difficult for the small guys, for the

little guys in the business and it is going to play in the hands of the big giants.

Do any of you have any comments you wish to make about either one of those four questions?

Mr. CAMPBELL. Sir, if I may. Alex Campbell, Enduring Resources. I will touch on a couple of your points.

From an unemployment standpoint, obviously the key here is to be economically profitable in the extraction of the product. I have shareholders that demand a return just like every other business, and I have to answer to them as to cost. To give you an example, where we have a high cost for a natural gas commodity last year, we had a net profit of 20 cents per mcf. This year my projections are looking at a net loss of over $3. We had a 20 percent staff reduction. We are trying to be as economical as possible. We have had to curtail our drilling efforts. There is a significant impact to the community. The socio-economic impact is dramatic when you see the number of people that are out of job and the impact it has on the tax base.

From a regulatory standpoint as far as leasing, you are absolutely correct. There are a host of things that have to be done in parallel or in tandem, if you will, from the point in time before you get a lease, you buy a lease analysis. You analyze it. Then there are a host of regulatory issues as well as you have to finance that project. You have to go out and secure the funds just like a ranching operation. I have to have the money to go out and develop the properties and then produce the properties.

I have a specific property that I started. It is called my rock house area. It is a six section project. It is a natural gas project, immediately adjacent to a very large field of attributes. This process started August 23rd of 2004. Before the sale even got off, there were protests. There is current litigation, September 2009, In this particular area, I have about $30 million invested, and I still am not able to finish drilling the project as I prescribed in my EA.

So the answer to your question is yes. By adding one more layer of regulatory oversight, especially if it is removed from the area that immediately is best able to manage it, you will see an impact on the timing.

Mr. DUNCAN. Thank you.

The CHAIRMAN. The gentleman from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and probably some of my colleagues are wondering why I am sitting in on this really because we do not have oil and gas in my district, but it does have serious implications no matter where you live as far as the energy needs of our country.

Mr. Zorn, I was touched by your comments saying about the tribes need to have a seat on the table. I recall a saying "If you are not at the table, you are going to be on the menu." And I think our tribes have been too long, too often being on the menu, and never been given proper treatment from the Federal government as far as I am concerned.

But I wanted to ask you, what do you think of the possibility of including a provision in this proposed bill establishing some kind of an advisory council composed of representatives from tribes? I

know that there is the Council of Energy Resource Tribes based, I believe, in Colorado composed of about 30 tribes that have energy-related resources just as good as the mining, the other mining companies. And I was wondering what do your 11 tribes think of the possibility of something like that—to advise the Secretary of the Interior on interests that affect these tribes that do have energy resources?

Mr. ZORN. It is a good idea. The question is how you organize that and how you organize it at a scale in a way that affords the tribes the maximum opportunity to participate. I think there is——

Mr. FALEOMAVAEGA. I do not think you have to meet every day, but certainly the proper way that——

Mr. ZORN. Exactly.

Mr. FALEOMAVAEGA.—would give the Secretary of the Interior best possible opinion and judgment on how to better deal with our Indian tribes.

Mr. ZORN. What we find, sir, is that the resistance to get tribes in the door is soon changed to welcoming them, because what you find is that tribes offer expertise that others may not have, and you soon find that some of our scientists and some of our experts are leaders.

Mr. FALEOMAVAEGA. And I would like to have Mr. Stover to help us. I certainly admire the experience that you have, sir, in dealing with uranium mining operations, and I go back to what I said earlier about what we did to the Indian Navajo Reservation, and their lands that contain uranium is disgraceful as far as I am concerned. I do not know how we dealt with this Indian tribe, and I suspect that other tribes are probably dealt in the very bad way in how we went about extracting uranium, and then leaving the poor tribes flat the way they are not only health-wise, but in so many other ways.

Mr. Stover, I notice that your company is Canadian-owned. That is great because this is what we are doing right now. Canada is currently doing explorations of natural gas on its waterways, and then they turn around and sell it to the United States, and here we are still grappling with the way and how we can do this technology clean and in the best way possible to maximize the consumer needs of our country and our people here in the U.S.

I just wanted to ask you, Mr. Stover, basically you have some very serious concerns about provisions of the bill? To redo the uranium mining is a better method, I suggest. If it is possible for Australia and Kazakhstan to extract uranium with the best technology available, why is it that our country cannot do the same?

Mr. STOVER. In fact, we do. The technologies, particularly the institute recovery technology that is applicable to certain deposits in the U.S., particularly those in parts of Wyoming and Texas, is state-of-the-art technology, and actually was developed in the U.S. 30 years ago.

Mr. FALEOMAVAEGA. Yes, why is it that France depends on nuclear power for its electricity; Japan, 60 percent; and here we have not built a nuclear reactor in the last 20 or 30 years or something like that. I am not clear specifically on the history. But I just wanted to ask you, do you think that maybe the technology could be

shared with our Indian tribes that have uranium mining potential for their development and for their benefit?

Mr. STOVER. Certainly. You know there is no reason that it cannot. The mining companies themselves, you know, when we are in those areas, have attempted, particularly in the last few years as the industry has undergone a resurgence, we are very much interested in opening dialogues with the Native American tribes and trying to work with them not only to do what we can to assist in resolving these legacy issues, but also to help create new economic opportunities within the tribal alliance.

Mr. FALEOMAVAEGA. And our friend who is the wind expert, I am told, and this is my concern about wind, no wind, no power, and I am told that you have to have wind generation of about 11 miles per hour in order for these propeller wind generating machines to function. Is that correct?

Mr. MATACZYNSKI. It varies depending on the manufacturer, but there is a cut-in speed that is somewhere in the neighborhood of 10 miles per hours where the wind turbines actually begin to operate.

Relative to the intermittence of the wind resource, we see that wind has to be part of the picture. It is complemented certainly by natural gas and other resources that you had to the grid to be able to ensure that you can provide service to people when they turn the switch on to turn the light bulb on and so forth.

Mr. FALEOMAVAEGA. I am sorry my time is up, Mr. Chairman.

Is Boone Pickens part of your organization?

The CHAIRMAN. Let me call the time on the gentleman and ask that he come take the chair while we go vote, but I want to recognize the gentleman from Colorado, Mr. Coffman, first.

Mr. COFFMAN. Thank you, Mr. Chairman.

Mr. Campbell, I have been told that in 2001 approximately 21 percent of leases were protested and that last year 100 percent of all lease sales were protested. Is this accurate, and if so, how does it affect your ability to produce?

Mr. CAMPBELL. Did you say 2001? I believe that is a correct statement. Last year my experience in Utah was that all of the lease sales were protested and all of the leases were in fact protested, and it impacts dramatically because it adds yet one more risk component to an otherwise very risky endeavor, which is drilling for natural gas. You are not always sure it is going to be there. You do not always know that once you buy a lease and you have to pay for it if the lease is going to issue. You end up in, for example, I have one lease that has been tied up now for over four years in litigation, and I have two others that are in the similar circumstances.

Mr. COFFMAN. OK. Mr. Campbell, again I believe that you have 19 employees in Colorado?

Mr. CAMPBELL. That includes two field people in Vernal and one person in Texas.

Mr. COFFMAN. As a small business, can you tell me what does an increase in rental rates and bonus fees and the addition of a production incentive fee mean to your company? How would that affect your ability to acquire lease holds, your drilling budget, and your business model?

Mr. CAMPBELL. As I indicated, my Utah properties were significantly under water at this point. Even at our best with a 20 percent—excuse me—with a 20-cent per mcf profit, we have to focus on our cost accounting all the time. Even though they sound like small incremental adjustments, certain of those adjustments are, you know, a doubling almost of fees from my perspective, and they impact my bottom line dramatically. If I have to make a choice between an investment on a public property or private property, depending on the fees, it may steer me in a different direction.

Mr. COFFMAN. Again, Mr. Campbell, the oil and gas industry is often criticized for not diligently developing on Federal leases. MMS reports last year that about 60 percent of leases are nonproducing. Are you concerned with the attempts by Congress and DOI to slow the leasing process when companies already seem to have plenty of leases?

Mr. CAMPBELL. I can speak to my own database. Of approximately 190,000 acres that we hold that are public lands, 75 percent of those are producing. I have 25 percent remaining, of which would be developed or in the process of being explored but for the regulatory process I spoke of impeding me from continuing to move forward to drill those lands. So I am not sure where to get that data. I can only speak from my own database.

Mr. COFFMAN. Why do companies not always immediately develop leases that they hold? Is there a reason why some companies sit on leases? Does litigation play a role in this? And if it does, can you give me an idea of about how many leases were protested last year, Mr. Campbell, and if anyone else would like to answer that?

Mr. CAMPBELL. That is a very good question, sir. It is a multiple part question.

First, as I tried to explain in my testimony, when you are able to acquire a lease several things have to happen. You have to do the geologic, geophysical analysis to determine where best to drill, and it takes time. That also takes money. That is another component. You have to raise the funds necessary to finance this very expensive operation. A typical well for me in Utah will run anywhere from three to four million dollars. That includes buying the lease, drilling the well, completing the well, and connect it to a pipeline.

Litigation plays a significant role in how we analyze our risk when we go to develop properties. If I have a lease potential for litigation, then I may not make that investment in the lease and the next two phases as far as the geophysical assessment and the drilling because I do not know what the probability is of the outcome of the litigation.

Mr. COFFMAN. Anybody else care to answer?

Mr. MORRIS. Let me add to that. I think sometimes we confuse nonproducing with inactive. Reality is only a small percentage of leases are going to have commercial quantities of oil and gas, but it takes several years to make that determination. Our analysis of the offshore leasing shows that, in any given year, there are about 20 percent that are producing. There is about a 12 percent return back to the government, and the rest of them are in some stage of development. So inactive and nonproducing, there is a little bit of confusion on those terms because even if they are nonproducing companies are actually out doing work, committing resources and

funds to determine whether or not there are commercial quantities of oil and gas.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Let me just say I am going to submit some questions for the record. The first gentleman whose name I could not pronounce even if I could see it from there, I do want to know how you talked about the consolidation in this new office would retire new development of renewable energies. I would like specifically that addressed in a written form, if I could. Same thing for Mr. Morris. You talked about the regional councils being a redundancy, and could they indeed be politicized. I would like that kind of response.

Mr. Campbell, I noticed that yesterday Secretary Salazar said that the leases, 77 controversial leases in Utah were moot because they were too close or adjacent is actually the word he said to national parks. I understand you had four of those leases that were canceled, and I believe, if I am correct, your lease are over 80 miles away from the national park.

Mr. CAMPBELL. That is correct, sir.

Mr. BISHOP. I would like those. I would like to also ask you specifically to comment on categorical exclusions and how the business community views those as why they are there, and if that is indeed an end run around environmental analysis or not. And we have to vote so I will cut it off right there. Those will be coming. Thank you, sir.

Mrs. LUMMIS. Mr. Chairman, thank you. I too will submit my questions, and ask you to respond in writing. Dr. Stover, I would just like to welcome you as a fellow Wyomingite to the Committee, and ask you if you would not mind in writing to explain what regulatory framework currently overseas your uranium mining to ensure that environmentally sound production occurs.

I asked a witness on the last panel to explain what incentives the bill provides for uranium exploration in the United States. I would love to have you take a stab at that question, and answer it in writing if you would be so kind.

Mr. Morris, would you be willing to submit in writing a little response to an assertion that was made earlier? The bill supports an assumption that categorical exclusions are utilized by land management agencies to allow for the circumvention of NEPA requirements by oil and gas producers. So I am interested in your reaction to that assertion.

Mr. Mataczynski, you expressed concerns in your testimony with several provisions of the legislation. I would like to know if you would agree that if the bill were enacted as currently drafted it would put at risk the progress that has been made toward expanding the leasing and development of renewable resources in America. Thank you.

And I know that Mr. Faleomavaega—I can never pronounce his name either—has left, but I share some of his concerns about the way that Indians are treated differently from non-Indians within the Department of the Interior with regard to mineral valuation rules, and so I will visit with him. If the bill moves to markup, I would like to work with him to try and co-sponsor something that

says unless the Indians exempt themselves, that mineral valuations between non-Indian and Indian mineral royalties will be the same, because the Indians have had to fight for like 15 years to get their mineral valuation rules to confirm to non-Indian rules, and the non-Indian rules were better for the government, and they should have the same advantages for tribal governments that non-Indians have for their government. So thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Gentlemen, we appreciate your time and patience with us today, and thank you for your testimony. The Committee stands adjourned.

[Whereupon, at 12:47 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Congressman Adrian Smith follows:]

Statement of The Honorable Adrian Smith, a Representative in Congress from the State of Nebraska

There are a number of challenges facing domestic oil and gas production, and I thank you, Mr. Chairman, for holding this hearing today. While I appreciate your commitment to address a path to energy development—the most important issue within this Committee's jurisdiction—I do have serious concerns with the proposed legislation, the Consolidated Land, Energy, and Aquatic Resources Act of 2009 (H.R. 3534).

During my time in Congress a number of energy bills have been introduced which, on the surface, seem to encourage the further development of our nation's energy portfolio. The means by which they seek to do this, however, would imperil our nation's energy supply by raising taxes and imposing duplicative, cumbersome regulations on domestic oil and gas industries. Policies which force a decrease in production would have a devastating effect on our economy just as it struggles to recover.

Unfortunately, the Consolidated Land, Energy, and Aquatic Resources Act of 2009 (H.R. 3534) is one such bill, and falls short of addressing the need to facilitate public access to domestic sources of energy. Instead, H.R. 3534 creates new levels of bureaucracy which inevitably will slow new American energy. And all the while, the current Administration has independently postponed plans for new offshore energy development. Now is not the time to further delay the advancement of American's energy. Such policies stifle our economy, which is especially crippling given our global competition.

Finding solutions to our country's dependence on foreign energy is a top priority for me. As a member of this Committee, I am committed to promoting policies which secure America's position as a world leader new in energy technology without putting consumers in jeopardy. While I strongly support programs to enhance alternative and renewable energy, I also am very encouraged by the investments in innovation and technology by the oil and gas industry.

Again, I thank you Mr. Chairman for holding this hearing, and I look forward to working with you to improve this bill. Also, Mr. Chairman, I would like to thank all of our witnesses, especially The Honorable Ken Salazar, Secretary of the U.S. Department of the Interior. His role is critical to moving forward with a national energy policy, and Mr. Secretary, I look forward to your upcoming visit to Western Nebraska.

[A statement submitted for the record by Kathy DeCoster, Vice President and Director of Federal Affairs, The Trust for Public Land, follows:]

Statement submitted for the record by Kathy DeCoster, Vice President and Director of Federal Affairs, The Trust for Public Land, in Support of Land and Water Conservation Fund provisions of H.R. 3534

Chairman Rahall and Honorable Members of the Committee:

I would like to thank you, Mr. Chairman, for the opportunity to present this testimony today on behalf of The Trust for Public Land (TPL) in support of Title IV of H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act.

This title would provide extended, full, and dedicated funding to the Land and Water Conservation Fund (LWCF), the nation's premier land protection program.

Since 1972, TPL has worked in communities across the country to assist national, state, and local public agencies, private landowners and concerned citizens working to protect our country's heritage of natural, cultural, recreation and other vital resource lands. Our work runs the spectrum of conservation initiatives: creating community gardens to help revitalize urban neighborhoods; preserving working forests with public and private partners; maintaining wildlife corridors and enhancing public recreation opportunities in state parks; and acquiring critical inholdings in the magnificent landscapes that lie within federal boundaries.

In total, TPL has completed more than 4,000 land conservation projects that together have protected some 2.5 million acres in 47 states. Roughly one-third of these special places were conserved either through outright federal acquisition of lands or easements, or through federal assistance to state and local governments.

That is why we are excited and grateful that Chairman Rahall has introduced legislation that, among other provisions, would provide extended, full, and dedicated funding to LWCF. The program provides funds to the Bureau of Land Management, the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Forest Service to acquire priority inholdings and other areas within established boundaries from willing sellers. When Congress acts on this committee's legislation to establish new federal units or expand boundaries, LWCF is often the actual source of federal funding used to protect these lands. Congress has appropriated LWCF funds to protect Civil War battlefields and other historic sites, the Appalachian and Pacific Crest national trails, recreational access sites for anglers and hunters in Montana, Wyoming, and Colorado, important wildlife habitats in diverse settings from New Jersey to Hawaii, and stretches of forestland critical to clean water supplies from California and Washington to New Hampshire and West Virginia.

The stateside part of the program ensures Americans have close-to-home places for recreation, outdoor education, and healthy play. Over the history of the program, more the 41,000 projects in every state and almost every county have received stateside grants. These grants also bring in significant non-federal contributions; a total federal investment of $3 billion has leveraged more than $7 billion in matching funds. A stateside LWCF grant helped the Town of Dunstable, Massachusetts protect 149 acres of rolling forestland and an adjoining historic home. Stateside funds were an essential part of land protection in Maine's famed 100-Mile Wilderness, the northernmost and wildest stretch of the Appalachian Trail. There are countless examples of stateside projects providing recreational, economic, and health benefits to communities across the country.

The economic benefits of land conservation cannot be overstated, particularly during recessions. A 2006 report from the National Parks Conservation Association determined that visitors spend over $11 billion annually in and around national parks supporting 267,000 jobs. The U.S. Fish and Wildlife Service reported in a 2006 national survey that 87.5 million hunters, anglers, and wildlife watchers spent more than $122 billion on their activities (travel, equipment, licenses, and land ownership or leasing). In addition to visitation, expenditures, and jobs, land conservation improves housing values through nearby access to recreation and by preserving the historic, scenic, and rural characteristics of many towns and counties.

For nearly 45 years, LWCF has been the cornerstone that sustains our federal public lands heritage and remains a compelling program. Interior Secretary Salazar said it well earlier this year: "I believe we can also find common purpose in a vision for land conservation that President Kennedy first dreamed in [the early 1960s]. President Kennedy's idea was simple: We should be using the revenues we generate from energy development and the depletion of our natural resources for the protection of other natural resources, including parks, open space, and wildlife habitat." TPL supports the continued quest to fulfill this vision.

Full and dedicated funding for LWCF as proposed in the legislation would enable federal agencies and state and local governments to better meet every year the growing needs of an expanding population for clean water, healthy outdoor activity, and economic vitality. Unfortunately, for nearly every year of the program's history, congressional appropriations have not reached the full authorization of $900 million. Because of this key properties available for conservation from a willing seller for a limited time are not protected and unique natural, recreational, historical, cultural, and ecological resources are lost.

The promotion of LWCF as highlighted in this testimony and by the legislation introduced by Chairman Rahall will determine the fate of our nation's most treasured public lands and our local communities' real needs. Just as much, they make a real difference in the lives of countless Americans. Whether we walk in a local park, cross-country ski through a protected forest, hike on a trail, or canoe across

a lake or a bayou, our daily lives are healthier and reinvigorated by the public land experiences these programs foster.

The Trust for Public Land will continue to invest its resources to protect our nation's natural, cultural and recreational heritage. As ever, we are deeply thankful for the Committee's recognition of the importance of these efforts. We urge you to renew the investment in these programs and stand ready to work with you to accomplish great things.

Thank you for your consideration of this testimony.

[A letter submitted for the record by the Land and Water Conservation Fund Coalition follows:]

Statement of the Land and Water Conservation Fund Coalition

Chairman Rahall, Ranking Member Hastings, and distinguished members of the Committee, we appreciate the opportunity to submit testimony regarding H.R. 3534, the Consolidated Land, Energy and Aquatic Resources (CLEAR) Act of 2009. As conservation and recreation organizations from across the country concerned with conserving America's natural, recreational, and cultural resources and heritage, we wish to express our strong support for the provision included in Title IV of H.R. 3534 to provide full and dedicated funding of the Land and Water Conservation Fund (LWCF).

As you know, the LWCF is America's most important tool for acquiring lands within our national parks, forests, refuges, BLM and other federal lands and for supporting acquisition, expansion and development of state and local parks. From the New River Gorge National River (WV) to the Appalachian National Scenic Trail, from Sleeping Bear Dunes National Lakeshore (MI) to Channel Islands National Park (CA), from Cape May National Wildlife Refuge (NJ) to the Fredricksburg and Spotsylvania National Military Park (VA), LWCF funding has helped acquire and protect some of our nation's most cherished and iconic public landscapes.

The LWCF state assistance grants helps states and local communities protect parks, trails, recreation fields and other park facilities. Running the gamut from wilderness to neighborhood playgrounds, the LWCF has supported projects in almost every county in America providing matching funding to over 41,000 projects. From Brooklyn's Coney Island Board Walk, to Griffith Park in Los Angeles, from Myrtle Beach State Park (SC) to Rangeley Lake State Park (ME), from the Patuxent River Greenway (MD) to Tualatin Hills Nature Park (OR), and thousands of places in between, LWCF projects provide partnerships with communities to ensure that families have everyday access to parks and open space, hiking and riding trails, and neighborhood recreation facilities.

The LWCF is a visionary and bipartisan program. It was created by Congress in 1965 and is authorized to receive $900 million annually in federal revenues from oil and gas leasing of the Outer Continental Shelf (OCS). It made good economic and environmental sense in 1965, and it remains good sense today, to reinvest a small fraction of federal leasing revenues in permanent natural resource protection

Despite this decades-old promise, the LWCF program has been chronically underfunded. It has received full funding only once in its history and in recent years has steadily declined to a low in appropriated funding of $155 million in 2008. Full and dedicated funding is needed for the LWCF to fulfill its congressionally mandated purpose. If enacted, this provision will provide the necessary level of federal investment in parks, trails, refuges, forests, spaces, and historical and cultural resources across the nation. We are delighted that Chairman Rahall has provided the leadership to include this Title IV provision in HR3534.

Parks and other public lands enhance the economic vitality and quality of life of our communities, making them places where people want to live, as well as vacation destinations. Our communities enjoy innumerable benefits from proximity to protected forests, parks, trails, refuges, and other areas for hiking, picnicking, hunting, fishing, mountain biking, camping, wildlife viewing, paddling, and mountain climbing. A renewed investment in the LWCF and public land protection is crucial to ensure this legacy.

Increasingly, it is recognized that a healthy environment and abundant recreational opportunity not only promote human health and quality of life, but also are good for the economy. The Outdoor Industry Association reports that active outdoor recreation activities generate $730 billion in revenues annually to our nation's economy and support 6.5 million (1 in 20) jobs. Further, the U.S. Fish and Wildlife Service estimates that over 87.5 million people engage in wildlife-related recreation

each year and that hunting, fishing and wildlife-watching combined generates over $122 billion annually to the U.S. economy.

Conserving forests, watersheds, and wetlands has other significant social and economic benefits, among them ensuring clean, adequate, and affordable drinking water supplies for our communities. In addition, it is becoming increasingly clear that conserving our forests, which currently store upwards of half the carbon emitted each year, is critical in the fight against climate change. Strategic land conservation also provides an important tool to manage wildfires and reduce the costs of fire fighting surrounding our communities. And, whether it is a visit to a local playground or an outing to a national park, getting outdoors connects families, promotes a healthy lifestyle, and builds community.

As the Committee considers H.R. 3534, we urge you to retain in any final legislation this important Title IV provision to secure full, permanent and dedicated funding of the LWCF. Mr. Chairman, we applaud your leadership in including this provision in the bill and appreciate your support and that of other Committee members to protect America's most treasured landscapes, strengthen our local economies, and ensure the future of our natural, cultural, and recreation heritage. We pledge the full support of the LWCF Coalition and our many partners across America towards the enactment of this provision. We look forward to working with the Chairman and Committee to bring the vision of LWCF to reality, at long last.

Thank you,

National and Regional Partner Organizations:

The Access Fund
American Canoe Association
American Hiking Society
American Forests
American Whitewater
Appalachian Mountain Club
Appalachian Trail Conservancy
Center for Biological Diversity
Choose Outdoors
The Conservation Fund
City Parks Alliance
Civil War Preservation Trust
Eastern Forest Partnership
The Forest Guild
Highlands Coalition
International Mountain Bicycling Association
National Park Trust
National Parks Conservation Association
National Recreation and Park Association
National Wildlife Refuge Association
The Nature Conservancy
North Country Trail Association
Northern Forest Alliance
Northern Forest Center
Outdoor Alliance
Outdoor Industry Association
Outdoors America
Pacific Crest Trail Association
Pacific Forest Trust
Partnership for the National Trails System
Rocky Mountain Elk Foundation
Sierra Business Council
Southern Appalachian Forest Coalition
Southern Appalachian Highlands Conservancy
Sporting Goods Manufacturers Association
The Trust for Public Land
The Wilderness Society
Western Resource Advocates
World Wildlife Fund

State and Local Partner Organizations:

Aiken County Parks, Recreation, and Tourism (SC)
Aiken Land Conservancy (SC)
Amigos de la Sevilleta (NM)
Association of Northwest Steelheaders (OR)

Audubon Society of Portland (OR)
Audubon New Mexico (NM)
Androscoggin Land Trust (ME)
Androscoggin River Watershed Council (ME)
Angel Island Immigration Station Foundation (CA)
Brandywine Conservancy (PA)
Boston Harbor Island Alliance (MA)
California Cultural Resources Preservation Alliance
California Parks Foundation
California State Coastal Conservancy
Carolina Mountain Land Conservancy (NC)
Central Coast Land Conservancy (OR)
Chattanooga Parks & Recreation (TN)
Chickasaw-Shiloh RC&D Council, USDA-NRCS (TN)
Cumberland Trail Conference (TN)
City of Berlin (NH)
City of San Jose (CA)
Crystal Cove Alliance (CA)
Center for Native Ecosystems (CO)
Colorado Council of Land Trusts (CO)
Colorado Environmental Coalition (CO) Parks and Recreation
City of Barnwell (SC) Parks and Leisure Services
City of Hartsville (SC)
Cultural and Leisure Service Department
City of Myrtle Beach (SC)
Charleston County Park and Recreation Commission (SC)
Coastal Conservation League (SC)
Connecticut Audubon Society (CT)
Chateauguay—No Town Conservation Project (VT)
Clinch Coalition (VA)
The Chewonki Foundation (ME)
The Cohos Trail Association (NH)
Chattanooga Parks & Recreation (TN)
Damariscotta River Association (ME)
Delaware River Greenway Partnership (PA)
Deschutes Land Trust (OR)
Easton Conservation Commission (NH)
El Camino Real de Tierra Adentro Trail Association (NM)
Edisto Island Open Land Trust (SC)
Elk River Land Trust (OR)
The Forest Guild (ME)
Friends of Acadia (ME)
Friends of Rachel Carson National Wildlife Refuge (ME)
Friends of Unity Wetlands (ME)
Friends of Las Vegas National Wildlife Refuge (NM)
Friends of Wallkill National Wildlife Refuge (NJ)
Forest Trust (NM)
Friends of Congaree Swamp (SC)
Friends of Santee National Wildlife Refuge (SC)
Friends of Assabet River National Wildlife Refuge (MA)
Friends of Pondicherry & Friends of Silvio O. Conte National Wildlife Refuges (NH)
Friends of Potomac River Refuges (VA)
Friends of Virgin Islands National Park (VI)
Fayette County Rod & Gun Club (TN)
The Freshwater Trust (OR)
Friends of the Columbia Gorge (OR)
Friends of the Cumberland Trail State Park (TN)
Friends of the New River Gorge National River (WV)
Friends of Radnor Lake (TN)
Friends of Tennessee National Wildlife Refuge (TN)
Grand Canyon Trust
Grand Canyon Wildlands Council
Great Old Broads for Wilderness (CO)
Georges River Land Trust (ME)
Great Pond Mountain Conservation Trust (ME)
Greater Lovell Land Trust (ME)
Greater Worcester Land Trust (MA)
Recreation and Community Services Georgetown County (SC)

Goose Creek Parks and Recreation (SC)
Greenbelt Land Trust (OR)
Greenville County Recreation District (SC)
Greensboro Land Trust (VT)
High Country Citizens' Alliance (CO)
Houston Parks Board (TX)
Harris Center (NH)
Irmo Chapin Recreation Commission, Columbia, SC
Kent Land Trust (CT)
Kittery Land Trust (ME)
The Land Conservancy of New Jersey
Lancaster County Parks and Recreation (SC)
Lexington County Recreation and Aging Commission (SC)
Litchfield Garden Club (CT)
Los Angeles Parks Foundation (CA)
McKenzie River Trust (OR)
Monadnock Conservancy (NH)
Mahoosuc Land Trust (ME/NH)
Maine Audubon
Maine Coast Heritage Trust
Maine Recreation and Park Association
Mass Audubon
Massachusetts Land Trust Coalition
Montgomery County Lands Trust (PA)
Narrow Ridge Earth Literacy Center (TN)
Natural Resources Council of Maine
New Hampshire Association of Conservation Commissions (NH)
New Hampshire Recreation and Park Association (NH)
New Hampshire Preservation Alliance (NH)
New Jersey Highlands Coalition
New Mexico Audubon
New Mexico Wildlife Federation
New River Alliance of Climbers (WV)
New York State Office of Parks, Recreation and Historic Preservation (NY)
Nonotuck Land Fund, Inc (MA)
Northeast Wilderness Trust (MA)
NorthWoods Stewardship Center (VT)
Oregon Council Trout Unlimited
Oregon Habitat Joint Venture
Oregon Natural Desert Association
Oregon Recreation & Park Association
Park Pride Atlanta (GA)
Peninsula Open Space Trust (CA)
Placer Land Trust (CA)
Pleasant River Wildlife Foundation (ME)
Portland Trails (ME)
Portland Parks Foundation (OR)
Richland County Recreation Commission (SC)
Randolph Town Forest Commission (NH)
Rio Grande Agricultural Land Trust (NM)
San Diego River Coalition (CA)
Save Crows Nest (VA)
Sempervirens Fund (CA)
SEWEE Association (SC)
Sheepscot Valley Conservation Association (ME)
Skylands Sierra Club (NJ)
Sierra Club, Maine Chapter
Society for the Protection of New Hampshire Forests (NH)
South Carolina Recreation and Parks Association
Southern Environmental Law Center (VA)
Southwest Environmental Center (NM)
Southern Oregon Land Conservancy
Southern West Virginia Convention and Visitors Bureau
Stowe Land Trust (VT)
Sumter County Recreation and Parks (SC)
Tennessee Ornithological Society (TN)
Tennessee Parks & Greenways Foundation (TN)
Tri-County Community Action Programs (NH)

Upstate Forever (SC)
Vermont Land Trust
Vermont Natural Resources Council
Vermont Woodland Owners Association
Virginia Forest Watch
Virginia Wilderness Committee
Virginia Native Plant Society
Volunteers for Outdoor Colorado (CO)
Wallowa Land Trust, Inc.(OR)
Western Rivers Conservancy (OR)
Western Foothills Land Trust (ME)
Western Pennsylvania Conservancy (PA)
White Mountains Conservation League (AZ)
West Virginia Mountain Bike Association
West Virginia Professional River Outfitters
West Virginia Park and Recreation Association
WildEarth Guardians (NM)

[A letter submitted for the record by Patrick Lyons, President, Western States Land Commissioners Association, follows:]

September 17, 2009

Dear Representatives Rahall, Hastings, Costa and Lamborn

Re: House Natural Resources Committee hearing of September 1617, 2009

On behalf of the Western States Land Commissioners Association (WSLCA) member States and their beneficiaries, please enter this letter into the record of the September 16 and 17, 2009, House Natural Resources Committee hearing covering pending energy and land conservation legislation. The WSLCA member agencies in 23 States manage several hundred million acres of surface, subsurface and submerged State trust lands for the benefit of public schools and other public institutions.

The following three issues are of particular concern:

(1) States having onshore federal lands, as well as those States adjacent to federal offshore lands, urge that State revenue sharing be extended to renewables, in addition to development under the Mineral Leasing Act and geothermal energy, which are addressed in existing law. This would be consistent with the spirit of the Mineral Leasing Act, which acknowledged State expenditures for public infrastructure and public services in support of development, while States could not tax federal land to support those expenditures.

(2) Consistent with transparency and prevention of any conflicts of interest, the Inspector General's responsibilities should continue to focus on department-wide oversight and audits of suspected problem areas, rather than taking on a new primary auditing role. Some of our member states such as Texas have ensured that financial management functions such as royalty reporting, audit and collections are separate and apart from lease management and administrative functions. We urge that you take a similar approach at the federal level.

(3) As a longstanding, strong supporter of the Land and Water Conservation Fund (LWCF), the WSLCA appreciates efforts to obtain full funding for both the federal and Stateside of the program. Among other purposes, this fund can buy State trust land inho1dings in federal conservation areas, allowing trust lands to generate income for education and other public services as originally intended and enabling conservation areas to serve their authorized purposes. Stateside LWCF funds are also highly valued by our sister agencies for public recreation.

Thank you for your consideration of these comments.

Sincerely,

Patrick Lyons
President
Western States Land Commissioners Association
310 Old Santa Fe Trail
Santa Fe, NM 87501

[A statement and report submitted for the record by The Nature Conservancy follow:]

Statement submitted for the record by The Nature Conservancy

Mr. Chairman and members of the Committee, I appreciate this opportunity to present The Nature Conservancy's recommendations for H.R. 3534. My name is Robert L. Bendick, Jr. and I am the Director of U.S. Government Relations at the Conservancy.

Introduction

The Nature Conservancy is an international, non-profit conservation organization working around the world to protect ecologically important lands and waters for nature and people. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. We are best known for our science-based, collaborative approach to developing creative solutions to conservation challenges. Our on-the-ground conservation work is carried out in all 50 states and more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

We believe this is an extremely important piece of legislation for the future of America's lands and waters. Our testimony focuses on three sections of the bill that are particularly important to the Conservancy's mission of "preserving the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive":

1. Full and dedicated funding for the Land and Water Conservation Fund;
2. The siting of energy facilities and the overall use of revenues derived from such siting for conservation purposes; and
3. Creation of an Ocean Resources Conservation and Assistance Fund and the adoption of planning and coordination processes for the effective management of ocean resources.

We commend Chairman Rahall and the Committee for including these provisions in the bill. Taken together, they can play a critical role in the conservation of America's watersheds, natural areas and marine ecosystems for their many long term benefits to our society.

Land and Water Conservation Fund

The Nature Conservancy strongly and enthusiastically supports Chairman Rahall's commitment to fully fund the Land and Water Conservation Fund (LWCF). This is the most significant proposal to invest in federal land protection in nearly a decade and can be an important step to a comprehensive program to conserve by various means America's most significant watersheds, ecosystems and metropolitan greenways.

More specifically, Title IV of H.R. 3534 would provide full, permanent and dedicated funding for the LWCF, the principal source of land acquisition funding for the National Park Service, U.S. Fish and Wild Service, Bureau of Land Management and the U.S. Forest Service. Such an action would accelerate the fulfillment of the President's promise to fully fund LWCF by FY14. It would also provide core funding to fulfill Secretary of the Interior Ken Salazar's call for a renewed commitment to protecting our nation's treasured landscapes. Funding of the State side of LWCF would allow state governments to match their own ongoing conservation funding initiatives and would allow the states to play an even more significant role in protecting natural areas for their multiple benefits and in providing places for outdoor recreation for America's families.

The U.S. has been a leader in conservation for well over a century. Even during the struggles of the Civil War, President Lincoln provided protection for Yosemite Valley. In 1872, the Congress set aside Yellowstone National Park as the world's first national park. And at the turn of the last century, President Theodore Roosevelt created numerous National Monuments, National Forests and the first national wildlife refuge.

In 1965, responding to a commission created by President Eisenhower and legislation proposed by President Kennedy, Congress created the Land and Water Conservation Fund to provide a reliable source of funding to conserve landscapes throughout the nation. Since then, it has been the source of funding for numerous federal protected areas, including West Virginia's Monongahela National Forest and Canaan Valley National Wildlife Refuge, Washington's North Cascades National Park, Colorado's Great Sand Dunes National Park, Montana's Rocky Mount Front

Conservation Area, Florida's Everglades National Park, the Appalachian National Scenic Trail and a host of other irreplaceable components of our natural heritage.

We are, today, faced with unprecedented threats to the integrity of natural, recreational, scenic, and cultural resources and the long-term conservation of our nation's lands and waters. From our nation's cities and metropolitan areas to remote backcountry locations, Americans depend on natural areas, working landscapes and cultural sites in fundamental and diverse ways. Accelerating climate change, continuing population growth, development and other land-use pressures, alternative and traditional energy production, constrained federal and state budgets, and the increasing separation of young people from experiences with nature all demand rapid action if our most important lands and waters are to be protected.

The need to invest in land conservation is well appreciated by voters throughout the nation. Last November, nearly three-fourths of state and local ballot measures for new land and water funding were approved, authorizing $8.4 billion in new land and water conservation investments. Yet, there continue to be unmet conservation needs in federal conservation areas and in many of our states.

The Conservancy also looks forward to working with other groups and in other forums to meet the promise of "Great Outdoors America," the recent report of the Outdoor Resources Review Group." The honorary Chairmen of the group are Senators Jeff Bingaman (D-NM) and Lamar Alexander (R-TN). Among the key recommendations of this report is to fund LWCF at $3.2 billion, the present inflation adjusted value of its 1978 authorization level of $900 million.

There is a national need for expanded and new land and water programs to conserve the network of natural lands and waters, recreational open spaces, working landscapes, urban and metropolitan parks, and cultural and historic sites that:

- Provide a foundation for our economy through sustainable jobs, including within working rural landscapes of forest and agricultural lands and in the expanding tourism and recreation industries. (A more detailed description of the economic and other benefits of land conservation is attached).
- Provide sufficient clean water and other ecological services for a growing U.S. population.
- Help ecosystems withstand the impacts of climate change so that they can continue to provide habitat for the full range of native species and serve the needs of human communities.
- Provide access to outdoor recreation and healthy exercise for every American from young people living in cities and suburbs to hunters and fishermen seeking traditional outdoor activities.
- Reflect the natural and historic heritage and cultural diversity of the American people.

Full and dedicated funding of the Land and Water Fund through this legislation would be an immensely important step forward, but in itself it is not sufficient to create the network of healthy natural areas and metropolitan greenspaces needed to sustain the character and quality of the lives of all Americans. A revitalized Land and Water Conservation Fund should be the foundation for the efforts of states, federal agencies, local communities and non-profit organizations to work together to restore and conserve whole watersheds and large landscapes for their multiple benefits.

The Conservancy also urges the Committee to include in any final legislation provisions to provide full and permanent funding to both the Payments in Lieu of Taxes (PILT) and Refuge Revenue Sharing programs. These important programs provide payments to counties where land has been taken off the local property tax roles and put into federal ownership. In some counties, protection of nationally significant natural resources impacts the tax base that funds local government services, including schools and public safety. Fully funding PILT and the Refuge Revenue Sharing programs would provide an important complement to fully funding LWCF and would honor the federal government's commitment to impacted communities.

Conservation of our country's land and water is not a luxury but is an essential part of our economy, our health and welfare and our way of life. While our country has made wonderful conservation progress over the last hundred years, we have not yet conserved sufficient land and water to protect the many values of natural lands and working landscapes against the threats they now face. We applaud Chairman Rahall for his leadership in proposing to fully fund the LWCF, the core component of a renewed commitment to conserve landscapes throughout the nation.

Energy Facility Siting

The Nature Conservancy supports the development of renewable sources of energy as an important strategy to mitigate climate change emissions. While desirable to

reduce greenhouse gas emissions, renewable sources of energy require much larger areas of land to produce the same amount of energy as the fossil sources they will replace. The combination of the Renewable Fuels Standard (RFS—36 billion gallons of biofuels must be blended by 2022), a Renewable Electricity Standard (RES—20% of electricity must be from renewable sources by 2025) and a long-term cap and trade program for climate change will result in very significant land areas committed to renewable energy production. The impacts are likely to be the most noticeable for solar energy in the Southwest, wind energy in the High Plains region (with associated transmission impacts) and for biomass in the forests of the Southeast. We, therefore, urge that renewable energy development be carefully planned and that any adverse impacts to wildlife habitat and ecosystem functions be fully remedied. We have comments in four major areas with respect to onshore leasing for renewable energy development.

First, we support the committee's inclusion in the bill of provisions that apply the "mitigation hierarchy" (avoid, minimize, compensate) to oil and gas and wind and solar leases on federal lands. In partnership with the Environmental Law Institute, the Conservancy has recently completed extensive research on the use of mitigation in the U.S. We believe that the rigorous application of the mitigation hierarchy by Federal agencies using an ecosystem framework for making decisions can avoid severe environmental damage and can result in the much more effective expenditure of compensatory funds. We urge the Committee to apply these same requirements for mitigation to energy development of all kinds on the Outer Continental Shelf and to uranium leases on federal lands. A comprehensive approach to mitigation using new and existing Federal plans as a framework for decision-making can both improve environmental protection and facilitate siting of alternative energy facilities.

Second, we would address the issue of comprehensive planning for the siting of renewable energy facilities on federal lands. The original draft of this bill contained very thoughtful provisions that established a regional planning process to identify renewable energy zones that would minimize impacts on other uses of federal lands. These provisions were dropped from the introduced bill. We urge that a planning component be restored.

The current process for siting renewable energy facilities is hampered by a lack of the necessary scientific data on biodiversity impacts and governmental mechanisms to employ such data in comprehensive plans. Currently, the decision-making process is driven by applications from energy developers to use particular locations for electricity generation (including associated infrastructure such as roads and transmission lines) or feedstock production. This structure for decision-making has at least three negative results:

- Impacts on biodiversity, especially those related to habitat fragmentation and severance of wildlife migration corridors, cannot be fully considered before the siting decision is made, greatly increasing the likelihood of conflict with respect to environmental impacts after the applications for governmental approval are filed, with resulting delay, uncertainty, and increased transactional costs.
- Government decision-makers are essentially trapped by the current approach into making isolated impact determinations on a sequential, site-by-site basis and are unable effectively to consider cumulative impacts from the development over time of multiple facilities in the same region.
- Facility siting decisions are not coordinated with transmission decisions, creating a "chicken or egg" problem with regard to the most cost-effective, time-efficient, and least impactful "build out" of renewable energy facilities and associated infrastructure in a given area.

Although decisions to site facilities on federal lands generally offer opportunities for public input, quite often substantial investments have been made for leases or production rights on private lands before the public becomes aware of the proposed land use change. Attempting to modify siting decisions after leases have been signed can be very difficult and conflict, delays, and increased transactional costs may be high. Federal government incentives and mandates should only apply to facilities that have given notice to appropriate state authorities well before significant economic commitments are made on the project.

It is possible to use a "coarse" mapping process to identify areas where siting should not occur at all or where conflicts with wildlife habitat or other land uses (e.g., recreation, military training and testing operations, and cultural heritage) may be significant. The result of such a mapping process would also to identify sites where conflict may be low and siting may proceed with some expectation of success. However, these "go" zones may not have significant capacity or the most productive renewable energy resources and pressure to develop other areas will continue.

A comprehensive long-range regional planning framework should be developed to collect the scientific data necessary to optimally site renewable energy facilities, consider cumulative impacts, provide for the full application of the mitigation hierarchy (avoid, minimize, or offset) with regard to environmental impacts, and coordinate energy production facility development with other land uses and transmission development. This planning framework should include federal agencies, state and local officials, industry participants, environmental organizations, and other stakeholders. The scope should cover development on both public and private lands. Authorities to mitigate for impacts on species not already listed as threatened or endangered and on natural communities as a whole may need to be enhanced, especially for development on private lands. Government incentives and authorities should be used as leverage to assure that energy developers engage in such planning at the earliest stages of project consideration and comply with the planning results.

These planning efforts should define the total capacity (load limits) for renewable energy production from various sources in the geographic region covered by the plan and should include an analysis of the impact of full capacity utilization on other competing land and resource uses in the region.

Final site selection and operational criteria should incorporate the best available science on biodiversity impacts and must avoid the conversion of high conservation value areas. Restoration and mitigation (offset) expectations need to be well-defined to ensure they are fully integrated into the business plans of energy developers and the capital markets. This will require the development of new mechanisms (i.e., investments in public land management and restoration in addition to private land acquisition) for some locations, especially in areas such as the Mojave with a high concentration of federal lands relative to state and private lands.

The Conservancy supports the provisions of the bill that substitute competitive leasing for the current "right-of-way" decision-making process. A leasing framework is most appropriate in the context of a comprehensive planning process such as we urge above.

The third issue we would ask you to consider is water use by solar thermal facilities in desert basins. Given the extremely dry conditions in the regions likely to host significant solar energy development, even the modest water requirements of dry-cooled concentrating solar and photovoltaic facilities may represent considerable stress on the limited local water resources. In addition, climate change models project that the desert will become even drier in the future, making water resources in the desert all the more precious and subject to overuse. Wet-cooling of solar-thermal facilities may be incompatible with these dry ecosystems.

Therefore, we recommend that as a pre-condition of being granted a permit or lease, every solar energy developer should be required to submit for approval an evaluation of their water supply needs, a proposal for the source of that water, an assessment of potential impacts of their water use on biodiversity, a comprehensive water monitoring plan to identify any adverse impacts on the local water resources, and detailed mitigation measures for estimated water resource impacts including contingency measures for unforeseen impacts detected by later monitoring. As a condition for operation, the permitted entity should be required to pay for implementation of the approved water monitoring plan.

The fourth issue with respect to renewable energy that we wish to address relates to the appropriate level of rental and other payments to require from producers who own or operate facilities on federal lands and waters that generate renewable energy. With respect to onshore wind and solar energy facilities, the bill now instructs the Secretary to recover an amount that 1) encourages the development of renewable energy, 2) ensures a fair return to the United States, and 3) is commensurate with similar payment for development on private lands. We think there may be an internal inconsistency in these goals at the present time.

For instance, it is generally assumed that a royalty payment on the order of one-eighth of the value of oil and gas produced on federal land is part of an appropriate return to the American public. If a similar royalty rate were to be imposed on electricity generated by wind turbines and solar energy facilities, the Department of Interior would be requiring a payment to the Treasury of approximately one cent for every kilowatt hour generated on federal lands. At a time when federal policy offers a production tax credit of two cents per kilowatt hour to encourage the development of renewable energy, it would be a curious land management policy that turned right around and discouraged production by taking half of that tax credit away from the producer. And, therefore, the instruction in the bill to require a fee that encourages the development of renewable energy would presumably result in fees much lower than one cent per kilowatt hour.

But times will change. Eventually, the costs of producing wind and solar energy will come down relative to the average price or electricity on the grid (in part be-

cause of policies that put a price on carbon released from fossil sources of generation) and it will not be necessary to provide tax incentives to stimulate generation from renewable sources. At that time, a royalty of some amount may be appropriate. However, and if the mining law is to serve us as an example, it may be very difficult to impose that royalty requirement for the first time at some point in the future for an industry that has by then a very substantial presence on federal land and has developed long-range business plans without consideration of future royalty or other such costs.

Therefore, it would be our suggestion that the Committee impose an explicit and appropriate royalty requirement now that reflects a fair return to the United States, but that the bill also place a temporary moratorium on collecting that royalty to a specified future date when electricity from renewable sources is projected to be fully cost-competitive with electricity from fossil fuel sources.

We believe that this approach should also be applied to wind and other renewable energy sources in federal waters, which under current policy would be required to pay a substantial royalty today.

Finally, we believe that revenues derived from renewable energy production on federal lands and waters should be allocated on a formula basis among the states and the federal government, with specified purposes for which such funds may be used, including principally conservation and land and water management measures designed to ensure the long-range health of the terrestrial and aquatic ecosystems in which renewable energy facilities and associated infrastructure are located. We strongly recommend that a special trust fund be established with regard to a specified portion of the funds allocated to the federal government under such a formula approach, with the funds deposited in the trust fund made available on a recurring, predictable basis to appropriate federal land managing agencies for the specified purposes, including deposits to the Land and Water Conservation Fund over and above the current $900 million authorization or a related program designed to restore and conserve whole ecosystems, watersheds and landscapes.

Offshore Energy Development and the Creation of an Ocean Resources Conservation and Assistance Fund

The Nature Conservancy applauds the proposed creation of the Ocean Resources Conservation and Assistance Fund in Title VI of H.R. 3534. Reinvesting a portion of OCS revenues into the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems, is long overdue and was called for by both the Pew Ocean Commission and the U.S. Commission on Ocean Policy. We strongly support these provisions in the bill.

In addition, the regional coordination and planning provisions for offshore energy development in Title VI could lead to significant improvements over the current processes. In particular, the ecosystem-based context for planning, regional approach, and greater reliance on spatial data and spatial planning approaches would be significant improvements. However, we recommend additional changes to ensure that regional planning maximizes ecological, economic, and social objectives for the allocation of ocean space, and adequately considers conservation priorities and ecosystem considerations.

Specifically we suggest the following changes to Title VI:

1. Assessments and planning should be done to meet multiple objectives, moving towards comprehensive planning rather than continuing the single sector approach, which has led to fractured governance and permitting systems and no overall safeguards for the comprehensive protection of ocean ecosystems. Planning objectives should be specified to include: conserving, protecting, maintaining, and restoring ecosystem health; and fostering sustainable development, including energy resources. Ensuring the protection of marine ecosystem health should be an explicit, primary principle to guide planning processes. Councils should also be encouraged to identify and address other shared federal-state priorities.
2. To achieve science-based, multi-objective planning that appropriately accounts for ecosystem conditions and impacts, assessments and plans need to be administered jointly by representatives from the Department of the Interior and the National Oceanic and Atmospheric Administration (NOAA). The Secretaries of Commerce and Interior should be co-chairs of the Councils and share equal responsibility for appointing members and guiding and approving the work of the Councils.
3. We support stakeholder involvement in the development of regional plans but, we are concerned that direct participation by stakeholders on the Councils—particularly in the absence of any criteria for balanced representation of interests or other qualification criteria—could lead to an intractable or skewed proc-

ess. We suggest removing the "Other Representation" paragraph altogether. However, if this paragraph remains in the bill we would be interested in working with the Committee to ensure appropriate structural safeguards are included.

4. The Atlantic Council, as currently structured, would include too many members, and cover too broad a range of marine ecology. We recommend creating three Councils along the Atlantic, possibly mirroring the boundaries of the existing regional ocean partnerships that have developed.

We also note that the Administration is working to develop a framework for marine spatial planning. We are supportive of their efforts and hope that their recommendations will lead us to a more comprehensive, ecosystem-based approach to ocean planning. We would like to see this draft legislation support moving towards more comprehensive approaches rather than reinforcing single sector silos.

Summary

The provisions of H.R. 3534 discussed here are critically important to America's well being. This bill is about giving the American people the means to shape the future of the land and water so critical to the health of our citizens and to the character and quality of their lives. It is about carrying on the highly successful conservation tradition that film-maker Ken Burns calls in his upcoming film on our National Parks, "America's best idea" in the face of a new wave of threats that could undo those conservation accomplishments. It is, in this very difficult and contentious world, about our being responsible citizens and remembering at this critical period in history what Theodore Roosevelt said a hundred years ago:

> It is time for us now as a nation to exercise the same reasonable foresight in dealing with our great national resources that would be shown by any prudent (person) in conserving and wisely using the property which contains the assurance of well-being for (ourselves and our) children.

Thank you for the opportunity to present The Nature Conservancy's recommendations for H.R. 3534, The Consolidated Land, Energy, and Aquatic Resources Act of 2009.

[The attached report follows:]

House Natural Resources Committee Chairman Nick J. Rahall (D-WV) has introduced H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2009. This legislation includes full and dedicated funding for the Land and Water Conservation Fund (LWCF) at the authorized level of $900 million annually.

The LWCF provides critical federal investments in America's natural, cultural, and recreational heritage by acquiring and protecting public lands and developing new recreational facilities in the regional, state, and local parks near where 80 percent of Americans live.

The LWCF federal program has added millions of acres to our national parks, national wildlife refuges, national forests, national historic and scenic trails, wild and scenic river corridors, Bureau of Land Management lands, and other federal lands. Most of the nation's largest intact landscapes, historically important sites, and recreational areas are found on these public lands.

The LWCF state assistance program has helped to develop thousands of trails, recreation fields, and other park facilities for Americans to use in their daily lives, as well as acquire new parks and recreation lands in every state in the nation.

The LWCF was created by Congress in 1965 and is authorized to receive $900 million annually from a portion of the federal revenues from oil and gas leasing of the Outer Continental Shelf. Unfortunately, the program has been chronically underfunded, receiving full funding only once in its multi-decade history.

In the last eight years, funding has steadily declined, with a low of $155 million in 2008. As a result, there is a substantial backlog of federal land acquisition needs estimated at more than $30 billion. The states also report a huge unmet need for local parks and recreation resources totaling more than $27 billion in eligible projects.

A recent national poll reports that a broad cross-section of the American public overwhelmingly supports preserving natural areas and open space. In addition, 81 percent of the public believes the continuance of a dedicated funding stream from federal oil and gas leasing should be used to fund the LWCF.

The Value of the Land and Water Conservation Fund

Jobs, Tourism, and Quality of Life: Visitor-driven business is important to local communities surrounding national parks and other public lands. Local economies are made more vibrant and resilient by the natural and cultural amenities and the abundant recreational opportunities provided by proximity to parks and public lands. These amenities greatly enhance communities' quality of life, which in turn helps large and small localities to attract new residents and businesses and to generate tourism-related jobs and revenues.

A 2006 study by the National Parks Conservation Association calculates that more than $13 billion flows into local communities and 250,000 private sector jobs are generated by national park visitation. Outdoor recreation including hunting, fishing, camping, climbing, hiking, paddling, backcountry skiing, mountain biking, wildlife viewing, and other activities contributes a total of $730 billion annually to the economy, supporting 6.5 million jobs (1 of every 20 jobs in the U.S.) and stimulates 8 percent of all consumer spending according to the Outdoor Industry Foundation.

Public Health: Parks, trails, and open space promote healthy lifestyles. Whether it is close-to-home ball fields or trails, or expansive wilderness areas, connecting people to recreation and outdoors activity promotes good health. Access to natural areas reduces stress, mitigates obesity and other health issues, connects families and communities, and enhances the quality of life for all Americans.

Clean Water: Protection of water supplies the old-fashioned way through watershed, forest, and wetland conservation, is the most cost-efficient way to ensure clean and adequate water supplies for communities. The value of water flowing through our national forests alone is $4.3 billion annually. Polling has found that 89 percent of Americans surveyed identify clean water and drinking supplies as their top conservation concern.

Hunting, Fishing and Watching Wildlife: Hunters and anglers know how important land conservation is to outdoor recreation. Hunting and fishing has become an economic building block in our national economy generating more than 1.6 million jobs and over $76 billion in sportsmen-related activities, according to a recent report from the Congressional Sportsmen's Foundation.

National wildlife refuges provide essential habitat for migratory birds and other wildlife, a safe haven for endangered species, and hunting, fishing, and wildlife watching opportunities. The 2006 U.S. Fish and Wildlife "Banking on Nature" report estimates that these amenities benefit local economies by $1.7 billion annually. Further, the U.S. Fish and Wildlife Service estimates that all wildlife-related recreation combined generates $122 billion annually, amounting to 1 percent of the gross domestic product in the United States.

Fire Prevention: The escalating numbers of wildfires particularly in western states and associated fire fighting costs have devoured the budgets of the Forest Service and the BLM. Between 2002 and 2006, the federal government spent more than $6 billion fighting wildfires, primarily to protect private homes and property bordering public lands. Land acquisition and protection along the forested-development edge of our communities is an essential tool to prevent forest fires.

Climate Change: As human activities accelerate the impacts of climate change, we must conserve and connect large, healthy ecosystems and habitats to make sure that biological systems stay resilient. The strategic acquisition of key inholdings, buffer areas, and wildlife migration corridors within and adjacent to existing public lands through the LWCF enhances adaptation efforts and fosters intact landscapes. These natural areas store carbon, buffer flooding and wildlife, conserve water, and support healthy fisheries and wildlife populations.

Education: America's parks provide students young and old with an opportunity to learn about our nation's unique historical and cultural heritage. Our parks and public lands are outdoor classrooms where the learning experience never ends regardless of whether the lesson is about wildlife, history, geology or the environment. Children and families are able to connect to preserved landscapes in a hands-on manner they simply cannot receive by reading a textbook or watching a documentary.

Preserving America's natural, cultural, historical, and recreational heritage: There are intangible and invaluable benefits in preserving public lands and telling the stories of our nation's natural and cultural heritage. Whether it is viewing the night sky in Utah's Zion's National Park, hiking the Appalachian National Scenic Trail, or studying the Civil War at Gettysburg National Military Park, the nation's collective heritage is continually being preserved through public landscapes. Our state and local parks, trails, and greenways provide day-to-day getaways for children and families and complement our system of nationally protected landscapes.

Organizations Supporting Full and Dedicated Funding for LWCF:

Adirondack Council
American Canoe Association
American Hiking Society
Appalachian Mountain Club
Appalachian Trail Conservancy
Choose Outdoors
Civil War Preservation Trust
Colorado Youth Corps Association
The Conservation Fund
Conservation Law Foundation
Eastern Forest Partnership
Friends of Pondicherry (NH)
Jefferson Conservation Commission (NH)
Highlands Coalition
International Mountain Bicycling Association
Monadnock Conservancy (NH)
National Association of State Outdoor Recreation Officers
National Audubon Society
National Park Trust
National Parks Conservation Association
National Recreation and Park Association
Natural Resources Council of Maine
National Wildlife Refuge Association
The Nature Conservancy
New York State Office of Parks, Recreation and Historic Preservation
North Country Trail Association
Northern Forest Alliance
Northern Forest Center
Outdoor Alliance
Outdoor Industry Association
The Pacific Forest Trust
Partnership for the National Trails System
Rocky Mountain Elk Foundation
Sonoran Institute
Tennessee Parks and Greenways Foundation
The Trust for Public Land
Western Rivers Conservancy
The Wilderness Society
World Wildlife Fund

For more information:

Maddy Pope, The Trust for Public Land, maddy.pope@tpl.org

Lesley Kane Szynal, Outdoors America, lkane@outdoorsamerica.org

Alan Rowsome, The Wilderness Society, alan_rowsome@tws.org

Michael Phillips, National Recreation and Park Association, mphillips@nrpa.org

---

[A statement submitted for the record by Ruth Pierpont, Director, Division for Historic Preservation, New York State Office of Parks, Recreation and Historic Preservation, follows:]

Statement submitted for the record by Ruth Pierpont, Director of Historic Preservation, New York Office of Parks, Recreation and Historic Preservation, New York State Historic Preservation Office, President, National Conference of State Historic Preservation Officers

I would like to thank Chairman Rahall, Ranking Member Hastings, and the members of the House Natural Resources Committee for the opportunity to provide testimony. I am Ruth Pierpont, Director of the Division for Historic Preservation, New York State Office of Parks, Recreation and Historic Preservation and President of the National Conference of State Historic Preservation Offices. I appreciate this first opportunity to present our thoughts on the proposed legislation.

The National Conference of State Historic Preservation Officers (NCSHPO) is the statutorily recognized, professional association of the State government officials who

carry out the national historic preservation program as delegates of the Secretary of Interior pursuant to the National Historic Preservation Act of 1966. The NCSHPO acts as a communications vehicle among the SHPOs and their staffs and represents the SHPOs with Congress, federal agencies and national preservation organizations

NCSHPO H.R. 3534 Recommendations

Title IV of The Consolidated Land Energy and Aquatic Resources (CLEAR) Act will make a dramatic difference in improving the quality of recreation and park land in the United States by making the Land and Water Conservation Fund (LWCF) a true trust fund. The NCSHPO proposes expanding that vision to conservation of the total environment including "human habitat" by amending the CLEAR Act to include permanent, guaranteed funding for the Historic Preservation Fund (HPF).

There are many synergies between the LWCF and Historic Preservation Fund (HPF). Historic preservation defines and enhances those aspects of the man-made environment that define our heritage. Historic preservation and its accompanying programs and incentives encourage the recycling, the use and re-use of buildings, neighborhoods, Main Streets, urban and rural areas. In addition to the educational and community-build advantages of saving our heritage, historic preservation betters the places people live and work; it provides an attractive and practical alternative to turning open space into subdivisions and strip malls. Historic preservation facilitates reinvestment and stewardship initiatives for the natural environment; it is an essential element to the success of any comprehensive conservation plan. Congress, led by Senator Henry Jackson (D-WA), acknowledged the synergy when it created the Historic Preservation Fund in 1976, following the Land and Water Conservation Fund model and using a portion of the funds from the depletion of non-renewable petroleum resources for the enhancement of non-renewable historic assets. House Natural Resources Chairman Nick Joe Rahall, Rep. Morris Udall (D-AZ), Rep. George Miller (D-CA) and Rep. Don Young (R-CA) reinforced that synergy by including the HPF in their efforts to create permanent funding (American Heritage Trust, Conservation and Reinvestment Act).

The NCSHPO supports the conversion of the HPF (16 USC 470h) into a permanent trust fund for the State Historic Preservation Officers and the Tribal Historic Preservation Officers. NCSHPO requests that the following language be a part of whatever bill is reported out by the Committee on Natural Resources, passed by the House of Representatives, adopted by the Congress and signed in to law.

SEC———AVAILABILITY OF AMOUNTS.

Section 108 of the National Historic Preservation Act (16 USC 470h) is amended-

(1) By inserting "(a)" before the first sentence:

(2) In subsection (a) (as designated by paragraph (1) of this section) by striking

"There shall be covered into such fund" and all that follows through "(43 USC 1338)," and inserting "There shall be covered into such fund $150,000,000 for each fiscal year after Fiscal Year 2010, from revenues due and payable to the United States as qualified Outer Continental Shelf Revenues (as that term is defined in Section 4 of the Resources 2000 Act),".

(3) By striking the third sentence of subsection (a) (as so designated) and all that follows through the end of the subsection and inserting "Such moneys shall be used only to carry out the purposes of this Act."; and

(4) By adding at the end the following:

(b) Subject to section 5 of the Resources 2000 Act, of amounts credited to the fund, $150,000,000 shall be made available annually for each fiscal year after September 30, 2010, to States and tribes for obligation or expenditure without further appropriations to carry out the purposes of this Act.

Unlike the LWCF, the federal interest in heritage conservation is one of assistance, not acquisition. As a team effort, historic preservation reaches conservation goals with the private sector and state and local governments. The Historic Preservation Fund supports the identification, evaluation and protection of America's heritage by encouraging property owners to re-use historic places and to conserve archeological heritage through regulatory consideration of preservation in federal planning processes and through commercial redevelopment of historic buildings. Federal ownership, or acquisition, does not play a role in the national program.

Support for HPF and SHPOs

2009 Second Century Commission Report

The 2009 Second Century Commission Report, released this week, advocates for permanent funding for the Historic Preservation Fund. The report states "a permanent appropriation for the Historic Preservation Fund at the full authorized level is vitally important so that the NPS can provide financial and technical assistance to state, tribal and local governments, and other preservation organizations, and ensure that America's prehistoric and historic resources are projected within and beyond park boundaries." [1]

2007 National Academy of Public Administration Report

In December 2007 the National Academy of Public Administration (NAPA) released "BACK TO THE FUTURE: A Review of the National Historic Preservation Program." NAPA, a non-profit, independent coalition of top management and organizational leaders, found that the National Historic Preservation Program "stands as a successful example of effective federal-state partnership and is working to realize Congress' original vision to a great extent. And while the program's basic structure is sound, it continues to face a number of notable challenges." The Panel concluded "that a stronger federal leadership role, greater resources, and enhanced management are needed to build upon the existing, successful framework to achieve the full potential of the NHPA on behalf of the American people." [2]

Specific report recommendations included the following:

- increased funding for SHPOs to address the increased workload since Fiscal Year 1981 in Section 106 reviews, National Register eligibility opinions, tax credit reviews, and HPF grants administration and to redress, at least in part, the significant decline in inflation adjusted funding;
- the NPS expand its mission to make building the capacity of State Historic Preservation Officers and Tribal Historic Preservation Officers a top priority and that it pursue this goal aggressively in cooperation with its national partners; and
- the Department of the Interior and the NPS strengthen the performance of the National Historic Preservation program and expand resources based on its demonstrated effectiveness in cooperation with the ACHP;

Expert Historic Preservation Panel

Ten leaders in historic preservation from across the nation were selected to explore improvements in the program structure of the federal preservation program. In their 2009 report "Recommendations to Improve the Structure of the Federal Historic Preservation Program," the panel recommended fully funding the Historic Preservation Fund and allocating additional funds Tribal Historic Preservation Officers. The panel stated that "the current $45 million (SHPO) funding level fails to provide adequate resources to fully address the responsibilities and mandates that the NHPA requires."

PART Audit

Under the Administration's Program Assessment Rating Tool (PART), in 2003 management of historic preservation programs received a score of 89% indicating exemplary performance of mandated activities. The review also indicated that a lack of an independent evaluation of the program was a program deficiency. Following the PART recommendations, the NPS hired NAPA to conduct this review. As stated in the preceding NAPA report section, NAPA found the program to be successful and in need for increased funding to be able to meet increased workloads and to keep pace with inflation.

Historic Preservation is Economic Development

Preserving the physical reminders of our past creates a sense of place and community and generates a wide range of economic benefits. Historic preservation creates jobs, brings people to downtowns and Main Streets, supports affordable housing and small businesses and generates tax revenues while revitalizing communities and neighborhoods.

The Federal Historic Rehabilitation Tax Incentives Program (FRTC) has spurred private investment on a 5 to 1 ratio and is a powerful job creation tool. Over $50.82 billion in private investment has been leveraged from its inception in 1976 and each

---

[1] National Parks Second Century Commission report "Advancing the National Park Idea" September 2009, p 42

[2] NAPA, "BACK TO THE FUTURE: A Review of the National Historic Preservation Programs" December 2007, p. 29

project approved by the NPS creates, on average, 42 new and principally local jobs. The following statistics are typical of the positive findings of preservation's economic benefits:

- Historic preservation activities generate more than $1.4 billion of economic activity in Texas each year.
- Each dollar of Maryland's historic preservation tax credit leverages $6.70 of economic activity within that State.
- Massachusetts benefits from historic preservation include a gain of about 87,000 jobs; $2.6 billion in income, $3.5 billion in GSP, $944 million in taxes.
- In New York State, $1 million spent rehabilitating an historic building ultimately adds $1.9 million to the state's economy. [3]

Dollar for dollar, historic rehabilitation creates more jobs than most other investments. According to a 1997 study on the economic impacts of historic preservation, "preservation's benefits surpass those yielded by such alternative investments as infrastructure and new housing construction." [4] In Michigan, $1 million in building rehabilitation creates 12 more jobs than manufacturing. In West Virginia, $1 million of rehabilitation creates 20 more jobs than mining $1 million worth of coal. [5]

Historic Preservation is Conservation and Sustainability

Historic preservation can—and must—be an important component of any effort to promote sustainable development. The conservation and improvement of our existing natural and built resources, including re-use of historic and older buildings, greening the existing building stock, and reinvestment in older and historic communities, is crucial to using our past to create a better future for generations to come.

The National Historic Preservation Program and SHPOs are responsible for the administration of public and private initiatives that advance sustainability. Environmental responsibility is achieved in the preservation industry through reducing land development pressures, recycling, waste reduction, saving landfill space, saving energy, reducing carbon emissions and promoting renewable resources. The sustainable economic benefits include fiscally viable communities, the use local labor forces, increases in property values and tax bases and heritage tourism. Historic preservation also promotes social and cultural responsibility through creating affordable housing, giving people a sense of place and community and incorporating smart growth principles.

According to the Smart Growth Network, "smart growth invests time, attention, and resources in restoring community and vitality to center cities and older suburbs. It also preserves open space and many other environmental amenities." Preserving and revitalizing historic buildings provides a key component to smart growth and simultaneously reduces development pressures on land and natural resources, complementing the efforts of the Land and Water Conservation Fund.

Conclusion

Congress stated in 1966 that "The spirit and direction of the nation are founded upon and reflected in its historic heritage." In 1976, Congress created the Historic Preservation Fund, using proceeds from non-renewable resources to help secure a future for other non-renewable resources—our Nation's historic heritage. We look forward to working with the Committee to ensure full and guaranteed funding for the Historic Preservation Fund so that our historic heritage will exist fifty, one hundred or five hundred years from now.

---

[3] New York Preservation League, Profiting Through Preservation 2002 pp 6.

[4] Center for Urban Policy Research at Rutgers University, Economic Impacts of Historic Preservation 1997:11

[5] Rypkema publication 13, pp 11-12.

[A letter submitted for the record by Hon. Sean Parnell, Governor, State of Alaska, follows:]

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532

Governor Sean Parnell
STATE OF ALASKA

550 West 7th Avenue #1700
Anchorage, Alaska 99501
907-269-7450
fax 907-269-7463
www.gov.alaska.gov
Governor@alaska.gov

September 30, 2009

The Honorable Nick J. Rahall II
Committee on Natural Resources
United States Congress
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall,

Thank you for the opportunity to provide comments as you consider H.R. 3534, "The Consolidated Land, Energy, and Aquatic Resources Act of 2009." Alaska has a long tradition of providing our nation with the domestic energy resources it needs to prosper. Our State permits the responsible development of our oil, gas, and other minerals, with close cooperation between federal and State governments, local communities, and industry.

While I recognize there are a number of areas where changes should be considered, such as royalty accounting and auditing, I am concerned that this legislation simply goes too far and will result in less domestic oil and gas production and fewer energy-related jobs in the U.S.

In the attached document, you will find a list of concerns the State of Alaska has with H.R. 3534, including:

- changes that will cause major inefficiencies within the agencies;
- arbitrary benchmarks that provide an unworkable one-size-fits-all approach to leases and increase unpredictability for potential bidders;
- creating planning councils that make State influence secondary together with strategic plans that are complicated to implement and will serve to supersede both State and local control;
- proposed revenue sharing component that will not treat resource states fairly and would distribute funds unequally; and
- "production incentives" which will only serve to discourage future investment in our domestic resources.

The State of Alaska's comments for the official committee record are attached. Thank you for this opportunity to comment.

Sincerely,

Sean Parnell
Governor

cc: The Honorable Don Young, United States Congress
The Honorable Doc Hastings, United States Congress

GOVERNOR SEAN PARNELL
State of Alaska

State of Alaska Comments on H.R. 3534

Creating a new bureau (Section 101)

Combining programs from the Minerals Management Service (MMS) and the Bureau of Land Management (BLM) to create the Office of Federal Energy and Mineral Leasing (OFEML) will cause inefficiencies as it is merely growing more bureaucracy. In spite of some perceptions, MMS and BLM implement a leasing program with some success. Importantly, this bill will cripple any near term progress in mineral leasing in Alaska by creating bureaucratic paralysis while the agencies reorganize. The National Petroleum Reserve-Alaska (NPR-A) would be particularly vulnerable to such delay.

Eliminating the Royalty in Kind (RIK) program (Section 217)

It is not necessary to eliminate RIK when better training and oversight of the people responsible for the federal RIK program would solve the problem. There are instances where taking oil and gas in-kind makes economic or other sense, as Alaska's own experience demonstrates. The federal government should follow a policy that allows for an RIK program when the outcome yields a direct benefit to the nation, something like the rules that apply to Alaska where an RIK sale must meet the "best interest" standard. A better approach would be to fix any outstanding problems with the royalty-in-value programs, rather than eliminate the RIK option.

Diligent Development (Section 301)

The requirement that OFEML establish benchmarks for "diligent development" suggests that every exploration and development program is the same. It is also punitive when imposed after the fact. A better approach would be to recommend that the lease, when offered in a lease sale, specify work commitments. This is allowed under existing law and would provide potential bidders with more predictable potential costs in their evaluation of their bids.

Best Management Practices (Section 306)

While laudable in its intent, this provision has the potential to add a layers of bureaucracy with no certainty that it will lead to positive environmental impacts. Often, environmental regulation is most effective when outcomes, expectations, and standards are clear but the actual management practices used to achieve standards are left to developers. Moreover, it is not clear that there is a need to alter the current approach.

Outer Continental Shelf (OCS) Regional Planning Councils (Section 602)

The proposal to establish Regional Planning Councils should be abandoned. These Councils diminish the legitimate decision-making authority of federal officials; diminish public accountability for agency action (or inaction); and, add another unnecessary layer to an already cumbersome regulatory process.

If this proposal is not abandoned, the states should have a greater role. Marine ecosystems extend into State jurisdiction and States will absorb impacts of offshore development. As such, a meaningful role for the states on OCS Regional Planning Councils is necessary and appropriate.

As best we can tell under the current proposal, the Council structure is heavily weighted towards federal agencies and other non-state entities. Governors can nominate only a single member to represent a State. A greater role for the states could include a more equitable distribution of seats and federal and state co-chairs.

Finally, the federal director's wide ranging discretion raises concern. The federal director has a great deal of latitude to add members to represent other interests such as tourism, environmental nongovernmental organizations, and many others. So much of the makeup of the councils is left to the directors' discretion that it is difficult to provide meaningful comment about what the impact on the states might be.

Regional OCS Strategic Plans (Section 603)

Alaska's immediate concerns focus on ambiguities in approach, process, and participation. The process that would produce a marine spatial strategic plan remains unclear. However, after reviewing marine spatial planning efforts undertaken in other areas, it is clear that the efforts result in substantial long-term consequences in the marine environment that is critical to the communities dependent on marine-based activities and resources.

Marine ecosystems are not limited to the spatial extent of federal jurisdiction. Hence, the development of marine spatial planning should assure active participation of coastal states as sovereigns with authorities in marine waters and relevant uplands, as well as resources and competencies of value to the planning process. Furthermore, the process should include active outreach to the wide range of constituencies and authorities with interests or responsibilities in the marine environment and resources.

Marine spatial planning as undertaken in other countries raises important questions and considerations for such a process in the United States. It is interesting to note that marine spatial planning pursued in other countries or by individual states in our own country has been a process requiring years of intensive effort. Belgium is developing an integrated national plan for its jurisdiction in the North Sea which entails 44 kilometers of coastline and 3,600 square kilometers of marine waters. Between 2002 and 2006, Norway completed a plan for part of its exclusive economic zone (EEZ) that addresses an area of 1.4 million square kilometers in the Barents Sea and anticipates two more plans for areas of similar size.

The United States has jurisdiction over 11 million square kilometers in its EEZ in addition to the Great Lakes, with the marine area extending from the Arctic to the temperate zones along the shores of three oceans. The extent of U.S. marine holdings and complexities of jurisdiction would require that action at the national level focus on stating broad goals and objectives and that more localized processes be employed to develop strategies and programs to fulfill the national goals. We support a deliberate and inclusive process as a necessary precursor to an effective plan and, therefore, encourage a conceptual level of discourse to be followed by expansive outreach and consultation with States. Marine spatial planning should have a local and regional focus relying on the resources and expertise of state and regional authorities.

The State of Alaska and the North Pacific Fishery Management Council have designated 673,000 square miles in the waters off Alaska as closed to fishing with some or all gear types. Boundaries and management measures for these areas should remain under local control. Regional councils and coastal states have the local knowledge and regulatory processes necessary to expand, modify, or contract these areas in response to new scientific research or changing conditions. We do not support inclusion of existing protected areas into a national framework that could make it difficult to modify boundaries or management measures in the future. Marine sanctuaries and marine protected areas should be established through existing regulatory processes at the local or regional level.

Establishment of the Ocean Resources Conservation and Assistance (ORCA) Fund (Section 605)

Ideally, the establishment of the ORCA Fund would represent some level of OCS revenue sharing for which Alaska and other States have been advocating. Unfortunately, the proposal put forth by H.R. 3534 is problematic for numerous reasons, including the following:

- All coastal states and regional ocean partnerships, regardless of proximal OCS activity or political stance on OCS development, are eligible for the funds. A state like Alaska, that assumes the responsibilities for planning and infrastructure development associated with OCS oil and gas development, ought to reap the rewards.
- The promise of a "grant" program for distributing money concerns us. Where federal agencies distribute money outside a formula, there is no guarantee that OCS revenues generated off Alaska's shores will be shared with Alaska. Eligibility for funding could be based on criteria entirely unacceptable for Alaska.
- The ORCA Fund provides grants for "activities that contribute to the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems." It is not clear that research and other activities that further facilitate oil and gas exploration on the OCS would be considered as appropriate under this Fund. It has been a significant challenge to get them approved under the existing Coastal Impact Assistance Program (CIAP), with MMS as the lead granting agency. As with the CIAP, the ORCA Funds are meant to mitigate or prevent impacts. However, there are many projects that the State could undertake or fund that would develop the baseline data and information that may further facilitate oil and gas development, but

in a more appropriate and educated manner. More information and data should lead to better permitting decisions.

Production Incentives (Section 702)

Charging more rent as a "production incentive" for leases not currently producing is an outright penalty to the industry and imposes costs at exactly the wrong time. This is a solution looking for a problem in Alaska. The explorers in the NPR-A are struggling to consolidate their land position after drilling many exploration wells at a cost of millions of dollars in the NPR-A over the last several years. Explorers are already facing the potential of losing acreage because leases will soon expire before the lessees have time to complete their exploration. Adding a higher rent is unfair and could eventually make federal lands in Alaska off-limits to any future development. This increase does not recognize the realities of how oil exploration and development occur in Alaska and elsewhere.

[A letter submitted for the record by the Sierra Club follows:]

September 15, 2009

US House of Representatives
Committee on Natural Resources
Washington DC, 20515

Dear Representative,

On behalf of Sierra Club's more than 1.3 million members and supporters, we are writing in support of H.R. 3534, the Consolidated Land, Energy and Aquatic Resources Act of 2009 (CLEAR Act). Thi legislation is an important first step in reforming energ development on America's public lands and the outer continental shelf.

While we oppose any new off shore oil and gas drilling, the Sierra Club believes that this bill takes an important first step towards balancing the need for energy production, reducing the impacts of global warming, and the protection of the environment. The bill contains several provisions which we support and a few places where we believe improvements can still be made. We are grateful to Chairman Rahall for his efforts to address these issues and we look forward to working together to improve and pass this bill. In Titles I, II, and III, we are supportive of the Chairman's efforts to improve the transparency and accountability in the onshore oil and gas leasing and royalty programs. The bill will increase public participation in the process, eliminate non-competitive leasing, provide for the implementation of best management practices. Specifically, we are most excited that the bill will repeal Section 390 of the Energy Policy Act of 2005 (EPACT), which allowed important environmental laws to be circumvented through categorical exclusions for oil and gas leases.

The Sierra Club supports Title IV, which provides for full and dedicated funding for the Land and Water Conservation Fund (LWCF) at the authorized annual level of $900 million. The LWCF provides critical federal investments in America's natural, cultural, and recreational heritage by acquiring and protecting public lands and developing new recreational facilities in the regional, state, and local parks near where 80% of Americans live.

The Sierra Club also supports Title V, which will establish statutory authority to enable the Secretary of Interior to create a competitive leasing program for the permitting of renewables on Interior and Forest Service lands. This new program will provide needed clarity and certainty for an industry in need of consistent and predictable regulation and help move America towards a new energy future based on renewable sources of clean energy, while moving us away for dirty fossil fuels.

However, while we are grateful for the efforts of Chairman Rahall to emphasize and facilitate the development of renewable energy on public lands, we feel that some improvements are still needed to this title;

- Current language is insufficient in explicitly providing protection for wildlife and landscape values. We believe that protections for such areas as wilderness quality lands and important wildlife migration corridors are necessary in order to properly protect these critical areas while also strategically guiding development toward properly vetted lands.

- As introduced, the bill dedicates all royalty revenues collected from renewable leases to the Treasury. This contrasts significantly with other leasing activities such as oil & gas permitting, where funds are distributed to a number of varying accounts and impacted communities. We believe that some portion of renewable royalty revenues should be directed towards the management and mitigation of the impacts associated with renewables development.

Regarding Title VI, the Sierra Club opposes any new off shore oil and gas drilling, especially in areas previously protected by the Congressional drilling moratoria, and continue to support having the Department of Interior develop 5-year plans. However, we understand the need for long-term planning, and marine spatial planning, on the outer continental shelf, and support Title IV's call for regional councils, councils that would include stakeholders such as alternative energy industries, coastal tourism associations, and environmental and public interest organizations. The Sierra Club believes that the DOI should retain final decision-making authority, but feel that the regional councils could aid in the development of new 5-year plans. While the Sierra Club strongly opposes state revenue sharing we support establishing the Oceans Resources Conservation and Assistance Fund to provide grants to states and other entities for the protection of local ecosystems.

Finally, the Sierra Club supports the repeal of unnecessary Deepwater Royalty Relief provisions. In sum, the Sierra Club supports the aims of Chairman Rahall and applauds him for his efforts to reform the current oil and gas leasing and royalty program, especially the repeal of Sec 390 or EPACT 2005. We support the full and dedicated funding of the Land and water Conservation Fund. We also support the effort to promote the development of renewable energy resources on public lands. As this legislation moves forward we look forward to working with the Chairman and his staff to make a few improvements and eventually passing H.R. 3534.

Sincerely,

Carl Pope
Executive Director
Sierra Club

Athan Manuel
Director, Lands Protection Program
Sierra Club

[A letter submitted for the record by Jerry R. Simmons, Executive Director, National Association of Royalty Owners (NARO), follows:]

September 21, 2009

Congressman Nick J. Rahall II
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Congressman Rahall:

We have been following your Committee on Natural Resources and H.R. 3534. On September 16, 2009 Secretary Salazar testified on issues related to H.R. 3534, BLM and MMS. He referenced the fact that DOI manages one-fifth of the on shore minerals in this country. We represent the private owners (8+ million) of the other four-fifths (excluding state owned) and wish to offer our assistance and 29 years of expertise in mineral management as the Congress and the Department of Interior move forward with modifications to federal policy.

Specifically, your "Section 214 Natural Gas Reporting" is an area we have been working with industry and state governments for several years. In fact, exposing the lack of transparency in the natural gas system from well head to burner tip has been one of our major efforts for the past several years. We have battled lost and unaccounted for gas in Texas, reporting requirements in Oklahoma, volume and metering issues in Colorado, and on and on and on. The federal government should be anxious to take advantage of our almost thirty year history of education, and study of these issues.

As private owners of the majority of the on shore mineral resources, we will no doubt be affected by any new policies you impose as they become "standards" for industry operation. Therefore, we request an appropriate place at the table as you move forward with mark-up and refining new legislation and DOI policy.

Sincerely,

Jerry R. Simmons
Executive Director

Cc: Secretary Salazar

15 W. 6th Street, Suite 2626 • Tulsa, OK 74119 • Office: (918) 794-1660 • Toll Free: (800) 558-0557 • Fax: (918) 794-1662